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Oregon State Board of Higher Education

Finance & Administration Committee
March 15, 2013
1:00—3:00 p.m.
Boardroom (ASRC 515), 1800 SW 6th Ave, Portland, Oregon

AGENDA

1. CALL TO ORDER/ROLL CALL/WELCOME

2. CONSENT ITEM
   a. Approval of Minutes, February 15, 2013 ......................................................... Appendix A

3. AGENDA ITEMS
   a. Capital Budget Process Post-SB 242 Finalization (Wiewel/Green) ......................... 1
      With the passage of Senate Bill 242, the System gained greater flexibility in the capital approval process along several dimensions. OUS is no longer subject to expenditure limitations and, therefore, projects without bonding do not need to go to the legislature for approval. This item identifies areas requiring amending to align with the new governing structure.

   b. Oregon Tech, InFocus Building Purchase (Wilsonville Campus) (Zemke) ............ 3
      In accordance with OAR 580-060-0020 (Purchases of Real Property), Oregon Tech requests the approval of the Finance and Administration Committee to enter into a purchase of real property agreement with InFocus Building, LLC (“InFocus LLC”).

   c. UO, Housing Central Kitchen and Woodshop (Moffitt) ....................................... 5
      The University of Oregon (UO) requests that the State Board of Higher Education authorize the University to build a Central Kitchen and Woodshop facility on its campus. The $8.5 million project budget will be funded from the UO Housing reserve funds, established entirely through the collection of room and board rates.

   d. Optional Retirement 401(a) Plan Definition of Normal Retirement Age (Yunker) .... 9
      The Internal Revenue Service and Department of Treasury require the Optional Retirement Plan (ORP) to define Normal Retirement Age (NRA) for the purpose of in-service distributions by January 1, 2015. Board consideration is requested in order to advise participants and campuses if the Plan’s NRA will be increased.
e. Oregon Administrative Rule Updates (Capital and Procurement) (Green/Bounds)
   i. Amendments to OAR Division 60 (Real Property, Facility, and Campus Planning) .................................................. 15
   ii. Amendments to OAR Divisions 61 (OUS Procurement and Contracting Code) and 62 (Purchasing and Contracts for Personal or Professional Services and Goods) .................................................. 29

4. REPORT ITEMS

a. 2013-2015 Outcome-based Budget Update (Kenton/Lewis)
   Update on initial meeting of the Outcome Based Budget Workgroup

b. State Audit Report Update (Snopkowski)

5. ADJOURNMENT

Note: All docket materials are available on the OUS website at: http://www.ous.edu/state_board/meeting/dockets. Please contact the Board’s office at (541) 346-5749 if you have any questions regarding these materials. This agenda may be amended at any time prior to 24 hours before the Committee meeting. Estimated starting times for the agenda items are indicated; however, discussions may commence, or action may be taken, before or after the suggested times. Any item on the agenda may be considered at any time out of order at the discretion of the Committee chair.
Capital Budget Process Post-SB 242 Finalization

SUMMARY
With the passage of Senate Bill 242, the System gained greater flexibility in the capital approval process along several dimensions. OUS is no longer subject to expenditure limitations and, therefore, projects without bonding do not need to go to the legislature for approval. The System and campuses have been working together on clarifying the process with the intent of moving more autonomy to the campuses particularly for those projects that do not receive bond funding. The attached process map clarifies the steps, responsibilities, and timeline of for the 2015-2017 legislative sessions, under the current governing structure. The process identifies the need to revisit the selection criteria for projects that request bond funding.

STAFF RECOMMENDATION TO THE COMMITTEE
Staff recommends that the Finance and Administration Committee approve the Capital Budget Process Map and the associated Approvals Summary with the note that the section of the table related to OAR 580-060 is a draft only. This section will be modified as needed when the proposed revisions to OAR 580-060 are adopted by the appropriate review bodies.

(Committee action required.)
Oregon Tech, InFocus Building Purchase (Wilsonville Campus)

In accordance with OAR 580-060-0020 (Purchases of Real Property), Oregon Tech requests the approval of the Finance and Administration Committee to enter into a purchase of real property agreement with InFocus Building, LLC (“InFocus LLC”).

Oregon Tech currently leases its Wilsonville campus located at 27500 SW Parkway Avenue in Wilsonville, Oregon, which is the former InFocus Building. At the time that the lease was executed in June 2010, the parties negotiated a purchase option in favor of Oregon Tech that would allow it to purchase the property plus additional costs. In July 2012, pursuant to that lease agreement, Oregon Tech informed the landlord, InFocus Building LLC, that it intended to exercise its purchase option with an anticipated closing date of April 19, 2013. The total cost of the transaction including additional costs is approximately $26,201,793. The funding for this purchase has already been allocated from a previously approved bond sale and approved internal financing. The due diligence necessary to complete the purchase is under way.

Among the diligence items required under OAR 580-060-0020 already completed is approval of the acquisition by the Oregon University System Chancellor and Vice Chancellor for Finance and Administration; a current appraisal by a licensed and experienced real estate appraiser of the property dated February 5, 2013, which confirmed that the full pending sale price of $26,201,793 is at market value. Assuming that the environmental assessment due mid-March 2013 confirms that any risk associated with the real property is reasonable under the circumstances, Oregon Tech expects its purchase of the Wilsonville campus to close as anticipated on April 19, 2013.

OUS General Counsel has retained Miller Nash LLP to assist with the legal review. OUS General Counsel will provide the final approve of the purchase agreements.

STAFF RECOMMENDATION TO THE COMMITTEE

In order to permit Oregon Tech to purchase the InFocus building on or before April 19, 2013, staff recommends that the Committee specifically authorize Oregon Tech to execute and enter into the purchase agreement. Staff further recommends that the Committee specifically authorize Mary Ann Zemke, Vice President for Finance & Administration at Oregon Tech, to execute all the foregoing related documents on behalf of Oregon Tech.

(Committee action required.)
UO, Housing Central Kitchen and Woodshop

SUMMARY AND ACTION REQUESTED
The University of Oregon (UO) requests that the State Board of Higher Education authorize the University to build a Central Kitchen and Woodshop facility on its campus. The $8.5 million project budget will be funded from the UO Housing reserve funds, established entirely through the collection of room and board rates. The new facility will result in annual savings of approximately $500,000 per year, resulting from the increased operational efficiency of combining kitchens and the expanded woodshop capacity permitting more in-house vs. contracted labor.

PROJECT DESCRIPTION

Central Kitchen and Woodshop
The project will provide space for both a centralized kitchen facility and a centralized woodshop, located on University-owned land between 17th and 19th Avenues and Moss and Columbia Streets. The central kitchen and woodshop are both support functions to University Housing. They will be combined under one roof because their programs require similar loading and delivery needs, similar facility-type space requirements, and both will be most efficiently located on the edge of campus.

Central Kitchen
The centralized kitchen facility will replace two separate and aging campus kitchens and combine them into a single larger production kitchen. The new kitchen will replace the existing 9,000 square foot (sf) Central Kitchen and the 7,000 sf Catering Kitchen located in the basement of Carson Hall and the ground floor of Bean Hall, respectively. The existing facilities are in very poor condition and, due to severe space constraints, are forced to operate with outdated equipment and a process layout that significantly hinders production capacity. The existing spaces lack adequate cold and dry storage to meet current demand and expected future expansion needs. The new facility will permit more local and organic food purchases resulting in expanded menus and more healthy food choices for residents.

The proposed new Central Kitchen will be approximately 19,000 sf and will include a multi-bay loading dock, dry storage, refrigerated storage, kitchen production facilities, staff offices, and delivery vehicle parking. The new facility will produce foods for an expanding residential dining system, as well as campus catering operations.

Wood shop
Carpentry and cabinet repair replacement for University Housing operations is currently spread out in localized work areas throughout the residence halls and adjacent support buildings. The make-shift shops are tucked into spaces that are not designed to accommodate uses of this nature and they do not include adequate workspace and storage. The only shop site that is not
located in a residence hall is failing structurally and will soon require demolition and replacement.

A new expanded wood shop of roughly 5,000-6,000 sf will provide for more efficient use of resources and create greater operational efficiency. Woodwork that currently must be outsourced will be done in-house, less expensively.

**Construction Method**

The UO is planning to use the Design-Build method authorized in OAR 580-063-0010 for this project. Using the Design-Build method provides for a single point of responsibility for both the design and construction of the facility. Detailed requirements regarding size, space, appearance, functionality, and performance will be provided in a Request for Proposals and the Design-Builder who submits the best proposal, which does not exceed the maximum price, will then be selected to design and construct the project. The final design will be reviewed and approved by the UO and necessary permits will be issued before construction begins. Construction is scheduled to commence in February 2014 and will take approximately nine months to complete. The new Central Kitchen and Woodshop facility is scheduled to be operational winter 2015.

**Funding**

The total project cost is not to exceed $8.5 million. The project will be funded entirely by existing University Housing reserves. No bonding or General Fund resources will be used in this project. The project budget includes all funds that have already been expended on project planning efforts to date.

The project budget includes the cost of intensive mechanical, electrical, and plumbing systems associated with a commercial kitchen. It also funds the energy performance requirements of the UO Oregon Model of Sustainable Development.

**University Study and Approval**

In the summer of 2012, the UO retained Robertson/Sherwood/Architects to assist with preparation of a feasibility study examining the preferred site and to develop conceptual plans, estimates, and schedules. The proposed location and function are consistent with the 2003 Development Policy for the East Campus Area, the 2005 *Campus Plan*, and the relevant City of Eugene plans including the Fairmount/University of Oregon Special Area Study. The full study may be reviewed at this [link](#).

In December 2012, the University’s Space Advisory Group reviewed the proposed project and recommended that the project move forward. The University provost and president approved this recommendation. In January 2013, the UO’s Campus Planning Committee reviewed the proposed Columbia Street site and recommended approval.
STAFF RECOMMENDATION TO THE COMMITTEE
In accordance with proposed capital project approval process, this request has been reviewed by Capital Planning and other staff who recommend that the Finance and Administration Committee approve this transaction. Once approved, the University will be authorized to proceed with the execution of the project.

(Committee action required.)
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Optional Retirement 401(a) Plan Definition of Normal Retirement Age

SUMMARY
The Internal Revenue Service and Department of Treasury require the Optional Retirement Plan (ORP) to define Normal Retirement Age (NRA) for the purpose of in-service distributions by January 1, 2015. Board consideration is requested in order to advise participants and campuses if the Plan’s NRA will be increased.

BACKGROUND
The Internal Revenue Service and Department of Treasury have issued guidance on the applicability of the 2007 NRA regulations to IRC 414(d) governmental plans, clarifying that governmental plans such as the ORP must define NRA if they provide in-service distributions before age 62. The ORP currently permits in-service distributions to retirees working under the terms of early retirement incentive programs such as tenure relinquishment as early as age 55 or 30 years of service, whichever occurs first.

The IRS will generally accept a NRA establish by the Board that is between ages 55 and 62 and that is based on a good faith determination by the Board that the NRA is the typical retirement age for the industry in which the covered workforce is employed.

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1 IRS Notice 2009-86 states
“Section 1.401(a)-1(b)(1)(i) of the Income Tax Regulations requires a pension plan to be maintained primarily to provide systematically for the payment of definitely determinable benefits after retirement. The NRA regulations amended § 1.401(a)-1(b)(1)(i) to provide an exception to the rule that pension benefits be paid only after retirement by permitting a pension plan to commence payment of retirement benefits to a participant after the participant has attained normal retirement age even if the participant has not yet had a severance from employer with the employer maintain the plan.

“The NRA regulations require a pension plan’s normal age to be an age this is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. The NRA regulations provide that a normal retirement age of 62 or later...is deemed to satisfy this requirement...Whether a normal retirement age that is at least 55 but below 62 satisfies the requirements is based on facts and circumstances.”

2 IRS Notice 2007-69 states:
“Section 1.401(a)-1(b)(2)(iii) of the 2007 regulations provides that, if a plan’s normal retirement age is between the ages of 55 and 62, the determination of whether the age is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed is based on all of the relevant facts and circumstances. The preamble to the regulations provides that it is generally expected that a good faith determination made by the employer (or, in the case of a multiemployer plan, made by the trustees) that the typical retirement age for the industry in which the covered workforce is employed is an age between age 55 and age 62 will be given deference, assuming that the determination is reasonable under the facts and circumstances.”
OUS staff has prepared decision support studies to document the rationale for defining the Plan’s NRA.

APPLICATION OF NRA IN THE ORP
Key areas where NRA is important for ORP participants include:

- To qualify as eligible for pre-Medicare health insurance, an ORP participant must have taken a distribution from the plan after reaching NRA.
- Participants of an early retirement incentive program such as tenure relinquishment may receive in-service distributions only after reaching NRA.
- Reemployment rules of the plan, including contribution tier, differ for “retired” and “ceased” participants.

REPLACING NORMAL RETIREMENT DATE WITH NRA
The ORP defines Normal Retirement Date but not Normal Retirement Age. The ORP defines Normal Retirement Date as “the first day of the month coinciding with or immediately preceding the Participant’s (a) fifty-fifth (55th) birthday, or (b) completion of thirty (30) Years of Service, whichever occurs first.” The IRS has not provided a safe harbor with respect to a NRA that is conditioned on years of service, as it is currently used in the ORP and many public plans. The years of service criterion is proposed to be removed from the definition. The change will not affect participants’ final benefits and will make the plan more consistent with typical defined contribution plans.

Proponents’ comments in favor of using the 30 years of service have questioned whether establishing a NRA that is higher than the lowest age a participant would achieve in 30 years of service would impair the protected rights of current participants to any benefit conditioned on normal retirement.

In 2011, the full group of ORP participants was evaluated to assess the question of impairment of participants’ rights to benefits. Specifically, retirement dates were projected to understand if ORP participants would achieve age 55 or 30 years of service first. Of 580 active participants who were hired in 1996 or before and would have 30 years of service in the ORP in 2026 if they were continuously employed, 98.8 percent (n=7) will have reached age 55, 95.3 percent (n=27) will have reached age 58, and 86.7 percent (n=77) will have reached age 62. Prior PERS service while working at an OUS institution was not included in the years of service study. However, of the 580 ORP participants who entered the plan in 1996, a total of 7 (1.2 percent) Tier One members may have had additional ORP Years of Service. The study shows that only a small percentage of participants could be affected by eliminating the 30 years of service qualification.

Because the ORP was designed to support career mobility, the likelihood that employees who select the ORP will actually have 30 years of service is expected to remain low.
ESTABLISHING NRA

The requirement for plans to define NRA is an IRS effort to prevent NRA from being set so low as to be a subterfuge to avoid the requirement that the benefit be truly related to retirement. NRA lower than 55 is presumed not to satisfy the requirement. NRA that is at least 55 but below 62 is generally acceptable if it is based on the employer’s good faith determination of the typical retirement age for the industry in which the covered workforce is employed.

OUS staff has used two approaches to determine the typical retirement age for the industry in which the OUS workforce is employed.

2011 Survey – Higher Education Plans NRA

In 2011, 53 other higher education Optional Retirement Plans and Alternate Retirement Plans in the U.S. were identified and contacted for information. Forty-one (41) of these responded and received a survey comprised of seven (7) questions regarding their plans’ NRA, size, type of plan, and variations in NRA by classification or entry date cohorts. Fifteen (15) institutions responded, although not all responded to every question.

Response Rate: 37 percent (15/41)
Range of Participant Populations: 2,587 – 35,000
Range of Total Assets: $146 million – $15.75 billion

Table 1. NRA in Higher Education Optional/Alternate Retirement Plans

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<th>50-54</th>
<th>55</th>
<th>56-58</th>
<th>59-61</th>
<th>62</th>
<th>63-65</th>
<th>65+</th>
<th>Total</th>
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<tr>
<td>Responses</td>
<td>0 (0%)</td>
<td>5 (33.3%)</td>
<td>0 (0%)</td>
<td>2 (13.3%)</td>
<td>2 (13.3%)</td>
<td>3 (20.0%)</td>
<td>3 (20.0%)</td>
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ERISA Plans: 6.3 percent  Governmental Plans: 93.8 percent
403(b) Plans: 37.5 percent  401(a) Plans: 56.3 percent  457(f) Plans: 6.3 percent

Summary of Findings

Although suggestive of age 55 as a NRA, the response rate was too low to infer a NRA that is reasonably representative of higher education institutions that offer Optional or Alternate Retirement Plans. Also, at best the responses would show the typical retirement age stated in retirement plans for the industry, rather than the typical retirement age for the industry.

PERS Retirement Ages Report

In 2013, an analysis of OUS employees who retired during the period of 1996 through the end of 2012 was based on retirement age data provided by the PERS (Public Employees Retirement System). It is useful to note that full retirement for PERS members is based on Tier 1, Tier 2, or OPSRP (Oregon Public Service Retirement Plan) dates of entry and is stated as the earlier of age 58 or 30 years of service for Tier 1 members, the earlier of age 60 or 30 years of service for
Tier 2 members, and the earlier of age 65 or age 58 with 30 years of service for OPSRP members.

PERS data on OUS retirements includes 4,097 members, living and deceased, who retired during the period of 1996 through the end of 2012. The full range of retirements spanned age 32 to age 80 and is based on the date that members began receiving PERS retirement benefits. Retirements prior to age 55 may be due to disability retirements and there were no Police & Fire retirees (who typically retire at a younger age) employed by OUS during that period.

The PERS data suggest that the typical retirement age will change slowly over time as Tier 1 and Tier 2 members are replaced by employees who joined PERS as OPSRP members after August 2003. The NRA for OPSRP members is the earlier of age 65 or age 58 with 30 years of service.

For illustration purposes, Chart 1 shows the number of OUS PERS members who retired at the ages under consideration for purposes of the ORP, ages 55 through 65.

Chart 1. PERS Retirement of OUS Members at Ages 55-65. (courtesy Oregon PERS, 1/13)

A subset of 3,350 retirees, ages spanning ages 55-65, shows identifiable peaks in retirement age.

- The highest rate for retirements during the period was 423 retirees (12.6 percent) at age 58. This age is the full retirement age for PERS Tier 1 members, hired before 1996.
- The second highest retirement rate was 392 retirees (11.7 percent) at age 62. This is the earliest Social Security retirement age.
- The third highest retirement rate was 328 retirees (9.8 percent) at age 55, which is the first early retirement date that is available to PERS members.
The fourth highest retirement rate was 324 retirees (9.7 percent) at age 60. This age is the full retirement age for PERS Tier 2 members, hired after 1995.

**PERS AS REASONABLY REPRESENTATIVE OF INDUSTRY**

The PERS retirement age data for OUS employees is persuasive as to the typical retirement age for the industry in which ORP participants are employed. The influence of various factors (PERS retirement age, Social Security, and Medicare coverage) is not relevant for the purpose of making a good faith determination of the typical retirement age but does inform interpretation of retirement patterns within the OUS member population. The data provides a clear indication that age 58 is the typical retirement age of OUS PERS members.

The PERS retirement data for OUS employees is believed to be more reliable than ORP retirement data would be for indicating the typical retirement age for the industry, because vested ORP participants who have terminated employment with OUS may withdraw their ORP accounts before retirement age without forfeiting benefits. The applicability of PERS retirement data to ORP participants is also supported by the following factors:

- Participation in the ORP is conditioned upon an eligible employee’s affirmative election to select the ORP in lieu of PERS. A participant defaults to PERS in the absence of the employee’s request to enroll in the ORP.
- Since 1996, 30 percent of eligible employees have elected to participate in the ORP; 70 percent elected or defaulted into PERS.
- The ORP and PERS have operated as parallel options since the ORP was established in 1996.
- Since 1996, ORP contribution rates have been based on OUS’s PERS contribution rates.
- PERS and ORP participants work side by side in OUS institutions, performing similar duties in support of the public universities’ goals for higher education in the state of Oregon.
- PERS and the ORP are both IRC 401(a) plans, although PERS is a hybrid defined benefit/defined contribution model while the ORP is strictly a defined contribution plan.

In the absence of the sufficient comparative data for the full higher education industry operating as members of public sector, governmental plans, Oregon PERS provides the most representative workforce for determining the typical NRA for the industry in which ORP participants are employed.

**STAFF RECOMMENDATION TO THE COMMITTEE**

Staff recommends replacement of the Optional Retirement Plan’s definition of Normal Retirement Date with a definition of Normal Retirement Age, defined as fifty-eight years of age. If approved, a Plan amendment will be drafted for the Board’s later adoption, to revise Optional Retirement Plan Section 1.20, Normal Retirement Date, which currently reads: “‘Normal Retirement Date’ means the first day of the month coinciding with or immediately preceding
the Participant’s (a) fifty-fifth birthday, or (b) completion of thirty (30) years of service, whichever occurs first.” The amended definition would be titled Normal Retirement Age and would read substantially as follows: “‘Normal Retirement Age’ means the Participant’s fifty-eighth birthday.” All references in the ORP to “Normal Retirement Date” would be changed to refer to “Normal Retirement Age.”

(Committee Action Required.)
Amendments to OAR Division 60 (Real Property, Facility, and Campus Planning)

Working with OUS university representatives, Chancellor’s Office staff have drafted amendments to Division 60 of the Oregon University System’s administrative rules covering real property, facility, and campus planning (see both a redline/strike-out version and updated version attached). The amendments are offered to accomplish the following:

- Align rules with the changes in Senate Bill 242,
- Clearly delineate roles and responsibilities, and
- Clarify language and eliminate unnecessary provisions

These draft amendments have been reviewed by counsel and were reviewed and approved by the Administrative Council in February.

The following provides more detail regarding the proposed changes.

*Align Rules with Changes in SB 242*

The draft amendments align the terminology in these rules with that within SB 242, namely referring to institutions as “public universities” and institution presidents as “university presidents.” Additionally, in accordance with the provisions of SB 242, we are no longer subject to the Land Conservation and Development Commission’s OAR 660-030, which mandates that university plans conform to regulations of applicable local jurisdictions.

*Clearly Delineate Roles and Responsibilities*

In accordance with the Board’s desire to delegate operational functions to university administration, the draft amendments:

- Eliminate the requirement that institutional plans be approved by the Chancellor or designee (580-060-0010);
- Delegates official property recordkeeping from the Chancellor’s Office to the universities (580-060-0015);
- Delegates execution of conveyances (purchases, receiving by gift, sales, and easements) to university presidents (580-060-0020, 0025, 0035, and 0040); and
- Raises dollar thresholds within the rule to the new thresholds being established within the Finance and Administration Committee capital approval process (580-060-0020 and 0035).

*Clarify Language and Eliminate Unnecessary Provisions*

The language in certain provisions was modified and reorganized in order to clarify the meaning of the rules (580-060-0045 and 0050). The dollar limitation within 580-060-0040 relating to easements was deemed unnecessary. In addition, 580-060-0060 relating to Board-provided housing was removed from rule and will be made an internal management directive as it is not
required to be in rule and having it in policy allows for more efficient administration of future policy changes.

**STAFF RECOMMENDATION TO THE COMMITTEE**
Staff recommends that the Finance and Administration Committee approve/support the proposed OAR changes and that they recommend such to the Board for adoption at the April 2013 meeting.

(Committee action required.)
DIVISION 60

REAL PROPERTY, FACILITY, AND CAMPUS PLANNING

580-060-0000
Authority
These rules establish the procedures that will be followed by public universities of the Oregon University System to acquire, receive, hold, control, convey, sell, manage, operate, lease, lend, improve, and develop all real property of the public universities under the control of the Board.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0005
Definitions
All capitalized terms in chapter 580, division 60 have the meanings set forth in OAR 580-061-0010 unless the context requires otherwise or except as stated.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0010
Comprehensive Plan Coordination
Each of the public universities will maintain a long-range campus development plan covering all real property under its control and management. The combined public university plans will be known as the Oregon University System Comprehensive Plan. Institutional plans, and revisions thereof, will be approved by the university president. The Chancellor or designee will approve revisions to the campus boundaries.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0015
Records
Each OUS public university will maintain the official records of all documents that affect real property under its control and management. Documents affecting real property include, but are not limited to, all instruments that acquire, transfer, sell, or alter the character of land.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08
580-060-0020
Purchase of Real Property
(1) All purchases of real property will be for the present or future development of the public university.
(2) Legal title to all real property purchased must be taken and held in the name of the State of Oregon.
(3) The university president is delegated the authority to execute conveyances for the purchase of real property after the following have been performed to satisfaction of the university president:
   (a) Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value;
   (b) Complete an environmental assessment and determine that any risk associated with the real property is reasonable;
   (c) Determine that sufficient ongoing revenues are available to operate and maintain the property
(4) If the consideration for the purchase is $5,000,000.00 or more, the university president must receive the prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0025
Gifts of Real Property
(1) Legal title to all real property gifted to a public university must be taken and held in the name of the State of Oregon.
(2) The university president is delegated the authority to execute conveyances for the gift of real property after the following have been performed to satisfaction of the university president:
   (a) Complete an environmental assessment and determine that any risk associated with the real property is reasonable under the circumstances;
   (b) Determine that sufficient ongoing revenues are available to operate and maintain the property

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0030
Condemnation
Acquisition of real property by condemnation will be conducted in accordance with ORS Chapter 35 and must be approved by the Board.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08
**580-060-0035**

**Sale of Real Property**

(1) The university president is delegated the authority to execute conveyances for the sale of real property after the following have been performed to satisfaction of the university president:
   
   (a) Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value;
   
   (b) Verify with the Chancellor’s Office regarding whether any tax exempt financing was used to purchase or improve the property and, if any such debt remains outstanding, coordinate with the Chancellor’s Office to ensure continued compliance with IRS regulations.

(2) If the consideration for the sale is $5,000,000.00 or more, the university president must receive the prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

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**580-060-0040**

**Easements**

(1) The university president is delegated the authority to execute easements and other nonpossessory interests in real estate.

(2) If granting an easement, the university president shall first verify with the Chancellor’s Office regarding whether any tax exempt financing was used to purchase or improve the property and, if any such debt remains outstanding, coordinate with the Chancellor’s Office to ensure continued compliance with IRS regulations.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

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**580-060-0045**

**Use of Board Property**

(1) If a public university intends to lease or license real property owned by the Board and either (a) the term of the lease or license exceeds 50 days in total or (b) the arrangement was not set at fair market value, then prior to the execution of the lease or license, the university president or designee will confer with the OUS Controller's Division to determine compliance with bond restrictions.

(2) The university president or designee will obtain prior approval of the State Board of Higher Education or an appropriate standing committee of the Board for agreements permitting the construction on or renovation to Board-owned property if such improvements exceed $5 million during the term of the agreement. To obtain approval from the State Board of Higher Education or an appropriate standing committee of the Board, the public university must specify where funding for operations and maintenance will come from.

(3) If the public university permits construction on or renovation to Board-owned property, the public university must approve all plans and specifications prior to the commencement of work and obtain record drawings upon termination of the agreement or completion of the work, whichever first occurs.
(4) Public universities normally will not make available public university buildings and other facilities to individuals for essentially private use or to outside organizations, unless approved in public university policy or required by law. Exceptions will be made only if the proposed use is consistent with public university policies and missions and the individual or organization fully reimburses the public university for all appropriate costs.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0050
Leases
(1) A university president is delegated the authority to execute leases of real property.
(2) If the consideration for the lease is from $5,000,000 to $15,000,000 or the term of the lease is over 10 years but less than 15 years, the university president must receive the prior approval of the Chancellor.
(3) If the consideration for the lease is over $15,000,000 or the term of the lease is over 15 years, the university president must receive the prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.
(4) Prior to executing an amendment to a lease, the university president must receive approval under subsection (2) or (3) based on the consideration or term of the amended lease.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 4-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12

580-060-0055
Naming Buildings
A university president is authorized to name buildings. No building or structure of the Oregon University System will be named after a living person. However, the Chancellor, or designee 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.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08
OREGON UNIVERSITY SYSTEM

DIVISION 60

REAL PROPERTY, FACILITY, AND CAMPUS PLANNING

580-060-0000
Authority
These rules establish the procedures that will be followed by public universities institutions of the Oregon University System to acquire, receive, hold, control, convey, sell, manage, operate, lease, lend, improve, and develop all real property given to any of the public universities institutions under the control of the Board, by private donors or acquired by any other method or from any source, except for any structure, or asset encumbered by a certificate of participation.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0005
Definitions
All capitalized terms in chapter 580, division 60 have the meanings set forth in OAR 580-061-0010 unless the context requires otherwise or except as stated.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0010
Comprehensive Plan Coordination
(1) Each of the public universities institutions will maintain a long-range campus development plan covering all real property under its control and management approved campus boundaries, including real property that is not contiguous to the main campus. The combined public universities institutional plans will be known as the Oregon University System Comprehensive Plan. Institutional plans will conform to OAR Chapter 660, Division 30 of the Land Conservation and Development Commission, which includes, but is not limited to, conforming the Institutional plans to regulations of the applicable local jurisdiction. Institutional plans, and revisions thereof, will be approved by the university president institution president and by the Chancellor or designee. The Chancellor or designee will approve revisions to the campus boundaries.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08
580-060-0015

Records
Each OUS public university will maintain the official records of The Office of Capital Construction, Planning, and Budget of the Chancellor’s Office will be the official record keeper for all documents that affect real property under its control and management. The official records include, but are not limited to, all instruments that acquire, transfer, sell, or alter the character of land. All documents will be provided by institutions to the Office of Capital Construction, Planning, and Budget in a timely manner.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0020

Purchase of Real Property
(1) All purchases will be in the name of the State of Oregon. All instruments acquiring title to real property must be executed by the Board President and Board Secretary in accordance with ORS 351.150. All purchases of real property will be for the present or future development of the public university.

(2) Legal title to all real property purchased must be taken and held in the name of the State of Oregon.

(3) The Institution President has been delegated the authority to approve purchases of real property after obtaining at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value if the consideration is less than $1,000,000. The Institution President must ensure that an environmental assessment has been completed and that any risk associated with the real property is reasonable under the circumstances and OUS Systemwide legislative expenditure limitation has been obtained prior to approving the purchase of real property.

(2) For the purchase of real property where the consideration exceeds $1,000,000, the Institution President or designee must:

(a) Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value; and

(b) Determine that sufficient ongoing revenues are available to operate and maintain the property.

(d) Obtain Legislative limitation, if required.

(3) All purchases of real property will comply with the applicable requirements of ORS Chapter 270. If the consideration for the purchase is $5,000,000.00 or more, the university president must receive the prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08
580-060-0025
Gifts of Real Property
The Institution President may accept gifts of real property on behalf of the Board. The Institution President must ensure that an environmental assessment has been completed prior to accepting the gift of real property and that any risk associated with the real property is reasonable under the circumstances. Legal title to all real property gifted to the Institution must be taken and held in the name of the State of Oregon and executed by the Board President and Board Secretary.
(1) Legal title to all real property gifted to a public university must be taken and held in the name of the State of Oregon.
(2) The university president is delegated the authority to execute conveyances for the gift of real property after the following have been performed to satisfaction of the university president:
(a) Complete an environment assessment and determine that any risk associated with the real property is reasonable under the circumstances;
(b) Determine that sufficient ongoing revenues are available to operate and maintain the property.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0030
Condemnation
Acquisition of real property by condemnation will be conducted in accordance with ORS Chapter 35 and must be approved by the Board.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0035
Sale of Real Property
(1) The university president is delegated the authority to execute conveyances for the sale of real property after the following have been performed to the satisfaction of the university president:
(a) Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value;
(b) Verify with the Chancellor’s Office regarding whether any tax exempt financing was used to purchase or improve the property and, if any such debt remains outstanding, coordinate with the Chancellor’s Office to ensure continued compliance with IRS regulations.
(2) If the consideration for the sale is $5,000,000.00 or more, the university president must receive prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.
(1) All instruments transferring title to real property must be executed by the Board President and Board Secretary.
(2) The Institution President has the authority to approve the sale of real property after obtaining at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value if the consideration is less than $1,000,000.
(3) For the sale of real property where the consideration exceeds $1,000,000, the Institution President must obtain at least one appraisal by a licensed and experienced real estate appraiser.
estimating the fair market value and must obtain prior approval of the sale by the Chancellor, or
designee.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. cf. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. cf. 7-21-08

580-060-0040
Easements
(1) The university president is delegated the authority to execute easements and other
nonpossessory interests in real estate.
(2) If granting an easement, the university president shall first verify with the Chancellor’s
Office regarding whether any tax exempt financing was used to purchase or improve the property
and, if any such debt remains outstanding, coordinate with the Chancellor’s Office to ensure
continued compliance with IRS regulations.
(1) All instruments granting or acquiring an easement must be executed by the Board President
and Board Secretary.
(2) The Institution President or designee has the authority to approve acquisition or grant of an
easement reasonably related to the operation of the Institution if the consideration does not
exceed $1,000,000.
(3) The Institution President or designee must obtain Chancellor, or designee approval for all
other easement grants or acquisitions.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. cf. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. cf. 7-21-08

580-060-0045
Use of Board Property Facilities for Other than Institutional Purposes
(1) If a public university intends to lease or license real property owned by the Board and either
(a) the term of the lease or license exceeds 50 days in total or (b) the arrangement was not set at
fair market value, then prior to the execution of the lease or license, the university president or
designee will confer with the OUS Controller’s Division to determine compliance with bond
restrictions.
(2) The university president or designee will obtain prior approval of the State Board of Higher
Education or an appropriate standing committee of the Board for agreements permitting the
construction on or renovation to Board-owned property is such improvements exceed $5,000,000
during the term of the agreement. To obtain approval from the State Board of Higher Education
or an appropriate standing committee of the Board, the public university must specify from
where funding for operations and maintenance will come.
(3) If the public university permits construction on or renovation to Board-owned property, the
public university must approve all plans and specifications prior to the commencement of work
and obtain record drawings upon termination of the agreement or completion of the work,
whichever first occurs.
(4) Institutions Public universities normally will not make available Institutional public
university buildings and other facilities to individuals for essentially private use or to outside
organizations, unless approved in Institutional public university policy or required by law.
Exceptions will be made only if the proposed use is consistent with Institutional public university
policies and missions and the individual or organization fully reimburses the Institution public
university for all appropriate costs. The Institutional President or designee will confer with the OUS Controller’s Division to determine compliance with bond restrictions.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. cf. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. cf. 7-21-08

580-060-0050
Transfers of Interests in Real Property Leases
(1) A university president is delegated the authority to execute leases of real property.
(2) If the consideration for the lease is from $5,000,000 to $15,000,000 or the term of the lease is over 10 years but less than 15 years, the university president must receive the prior approval of the Chancellor.
(3) If the consideration for the lease is over $15,000,000 or the term of the lease is over 15 years, the university president must receive the prior approval of the State Board of Higher Education or an appropriate standing committee of the Board.
(4) Prior to executing an amendment to a lease, the university president must receive approval under subsection (2) or (3) based on the consideration or term of the amended lease.

(1) Private Activity Limitations: If an Institution intends to execute any transfer of an interest in real property owned by the Board or the right to use Board real property, including a lease or license, and either (a) the term of the transfer exceeds 50 days in total or (b) the arrangement was not set at fair market value, then prior to the execution of that transfer of interest in real property, the Institution President or designee will confer with the OUS Controller’s Division to determine compliance with bond restrictions.

(2) Authority to Execute Agreements: The Institution President or designee is authorized to execute documents transferring such interests for real property owned or controlled by the Board or real property for the use of the Institution if the term of the agreement and all extensions do not exceed ten years or the consideration for the transfer of an interest does not exceed $5 million over the term of the agreement. The Chancellor or designee may approve transfers of interest if the term of the agreement and all extensions do not exceed 15 years or the consideration for the transfer of an interest does not exceed $15 million over the term of the agreement. All other transfers of interests for real property will be approved by the Board or designee.

(3) Improvements to Board-Owned Property: The Institution President or designee will obtain prior approval of the Board for agreements permitting the construction on or renovation to Board-owned property if such improvements exceed $5 million during the term of the agreement. To obtain approval from the Board, the Institution must specify where funding for operations and maintenance will come from.
(a) If the Institution permits construction on or renovation to Board-owned property, the Institution must approve all plans and specifications prior to the commencement of work and obtain record drawings upon termination of the agreement or completion of the work, whichever first occurs.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. cf. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. cf. 7-21-08
580-060-0055
Naming Buildings
An Institution president is authorized to name buildings. No building or structure of the Oregon University System will be named after a living person. However, the Chancellor, or designee 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.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-060-0060
Board of Higher Education-Provided Housing
(1) Consistent with ORS 182.415 to 182.435, the Board will collect rent for housing provided to officers and employees. Each Institution will:
   (a) Examine periodically, but not less frequently than once every five years, each rental unit's fair rental value. Fair rental value will be determined by a qualified appraiser certified under ORS 308.010 or licensed under ORS 674.310. The rental rate will be adjusted annually to reflect changes in community real estate values, if any.
   (b) Collect rent for such housing based on the fair rental value, subject to any rental rate reductions authorized in subsection (2).
   (c) Deposit such rental income in an appropriate Institution account.
   (d) Provide no furnishings except as authorized by ORS 182.415(1)
   (e) Determine whether to provide or to what extent the Institution will provide utilities and services for each housing unit.

(2) Each Institution providing housing for officers or employees may reduce the rent charged, by up to 100 percent from the fair rental value based on the following factors:
   (a) Rental reduction for Institution need provided:
      (A) If residence in the housing unit is a job requirement, as evidenced by contract or position description and not offered as an incentive or a fringe benefit to the resident state employee—50 percent reduction; or
      (B) If residence in the housing unit is not a job-related requirement but it is a distinct advantage to the Institution to have the officer or employee live near the job in case of an emergency or for general protection of Board property in the area—20 percent reduction; or
      (C) If residence in the housing unit is not a job requirement and the only advantage to the Institution is to reduce the chance of vandalism and deterioration to a Board-owned or controlled residence—10 percent reduction; or
      (D) If residence in the housing unit is not a job requirement nor is it for the benefit of the Institution, but is solely for the benefit of the occupant—No reduction.

   (b) Rental reduction for invasion of privacy.
      (A) If the housing unit or a significant part of it is used for a public office or public business or is so located that invasion of privacy by the public or by guests invited for Institution-related activities is expected or usual—30 percent reduction; or
      (B) If the public is not invited and invasion of privacy is not the usual occurrence, but the residence location or architecture plainly indicates state ownership and there is little or no restriction of public or Institution client traffic—20 percent reduction; or
      (C) Invasion of privacy is an occasional or seasonal occurrence and there is some restriction to public traffic—10 percent reduction; or
(D) Invasion of privacy is no more than would be expected for an average privately owned residence—No reduction.

(c) Rental reduction for isolation.

(A) If the housing unit is located in an isolated area, defined as being more than 50 miles distance or 90 minutes travel by automobile from the nearest full-service community, or the travel conditions are usually severe or hazardous—20 percent reduction. A full-service community is one with a supermarket, department store, medical doctor, dentist, church, school, etc.; or

(B) If the housing unit is located 30 to 50 miles distance or 60 to 90 minutes travel by automobile from the nearest full-service community or the travel conditions are seasonally severe or hazardous—15 percent reduction; or

(C) If the housing unit is located 10 to 30 miles distance or 30 to 60 minutes travel time by automobile from the nearest full-service community, the travel conditions are only occasionally severe or hazardous—10 percent reduction; or

(D) The housing unit is located within 10 miles and not over 30 minutes travel time by automobile from the nearest full-service community and the travel conditions are rarely severe or hazardous—No reduction.

(d) Rental reduction for unique conditions. Certain unique conditions may arise or exist in addition to those in subsections (a)–(c) above. Rent may be reduced as follows:

(A) To correct inequities between the fair rental value as determined in subsection (1) and the salary of the officer or employee occupying the residence—reduction to the extent necessary and reasonable;

(B) Because of unique conditions in the Board's title to the property (e.g., the Board's ownership is conditioned upon residence by a specified employee)–up to 100 percent of the fair rental value; and

(C) Other factors necessary for effective program management (cannot include factors reflecting only the convenience or comfort of an employee)—a reduction of up to 20 percent.

(3) At least once every five years, Institutions 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 351, 182.415, 182.425 & 351.070

Stats. Implemented:
Amendments to OAR Divisions 61 (OUS Procurement and Contracting Code) and 62 (Purchasing and Contracts for Personal or Professional Services and Goods)

Working with OUS university representatives, Chancellor’s Office staff drafted amendments to Divisions 61 and 62 of the Oregon University System’s administrative rules covering the OUS procurement and contracting code as it relates to goods and services (see both a redline/strike-out version and clean version of OARs attached). The amendments are offered to accomplish the following:

- Align rules with the changes to processes related to the passage of SB 242 and new Board policies,
- Update processes to reflect changing technologies and procedures, and
- Clarify language and eliminate unnecessary provisions.

These draft amendments have been reviewed by counsel and were reviewed and approved by the Administrative Council in February.

The following provides more detail regarding the proposed changes.

*Align rules with the changes to processes related to the passage of SB 242 and new Board policies*

The draft amendments align the terminology and processes in these rules with changes required by the passage of SB 242 and recently adopted Board policies. Specifically the amendments:

- Remove all references to the Department of Administrative Services,
- Provide exemptions to contract for insurance and legal products and services required by our departure from the state insurance fund and the Department of Justice, and
- Include new language to align the OARs with the Board policy on contracting with Historically Underrepresented Businesses, as adopted last year.

*Update processes to reflect changing technologies and procedures*

Upon the request of Institution purchasing and contracting staffs and counsel, updates to the amendments:

- Include clear language allowing for electronic submission of Bids and Offers and the procedures related to such,
- Modify requirements for cooperative contracting with other state agencies to provide for using cooperating contracts advertised via the internet,
- Create an exemption for contracts relating to specifically budgeted items in grant-funded projects,
• Apply the Special Procurement exemption existing in capital contracting code to goods and services,
• Increase the threshold for Formal Procurement from $100,000 to $150,000, and
• Explicitly allow Institutions to establish lower procurement thresholds per public university policy or procedure.

_Clarity and Elimination of Unnecessary Provisions_

The language in certain provisions was modified in order to clarify meaning, maintain consistency, and reflect current processes.

**STAFF RECOMMENDATION TO THE COMMITTEE**

Staff recommends that the Finance and Administration Committee approve/support the proposed OAR changes and that they recommend such to the Board for adoption at the April 2013 meeting.

(Committee action required.)
DIVISION 61
OUS PROCUREMENT AND CONTRACTING CODE

580-061-0000  
Code of Ethics  
(1) The following Code of Ethics will apply to Oregon University System employees in relation to chapter 580, divisions 60, 61, 62, and 63. Employees will:  
(a) Give first consideration to the objectives and policies of the Board, OUS, and the Institution;  
(b) Strive to obtain the best value for expenditures;  
(c) Fairly consider prospective Contractors insofar as state or federal statutes and institutional rules and policies require;  
(d) Conduct business in an atmosphere of good faith;  
(e) Demand honesty in representations made by prospective Contractors;  
(f) Promote competition by encouraging the participation of Oregon businesses, emerging small and minority-owned and women-owned businesses, and Qualified Rehabilitation Facilities;  
(g) Comply with the applicable provisions of ORS Chapter 244 and other applicable rules and policies on conflict of interest that may be more restrictive;  
(h) Refrain from having financial interests incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in the Oregon University System's Internal Management Directives and other applicable rules and policies;  
(i) Receive the written consent of the originator of proprietary ideas and designs before using them; and  
(j) Foster fair, ethical, and legal trade practices.  
(k) Execute the OUS Conflict of Interest Statement before any person may participate in the evaluation or selection of a Contractor or vendor under a Formal Procurement process.  
(L) On an annual basis, sign a statement that the employee has reviewed and will comply with the OUS Code of Ethics.  
(2) This code is for the Oregon University System's internal use only and creates no obligations enforceable by Contractors, Proposers, Bidders, or other parties doing business with an Institution, nor may it be used by Contractors, Proposers, Bidders, or other parties doing business with an Institution who are challenging actions taken by an Institution or its officers, employees, or agents. This code may not be the only statement on ethics applicable to an employee.  
Stat. Auth.: ORS 351  
Stats. Implemented:  
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08
580-061-0005
Applicable Model Public Contract Rules
The Attorney General's Model Public Contract Rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 are generally inapplicable to the contracting activities of Institutions unless specifically referenced and adopted herein.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0010
Definitions
The following Definitions will apply to chapter 580, divisions 60, 61, 62, and 63, unless the context requires otherwise:
(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and posted on the OUS procurement website for access by all interested Offerors.
(2) "Award" or “Awarding” means, as the context requires, identifying the Entity with whom the Institution intends to enter into a Contract following the resolution of any protest of the selection of that Entity and the completion of all Contract negotiations.
(3) "Bid" means an offer, binding on the Bidder and submitted in response to an ITB.
(4) "Bidder" means an Entity that submits a Bid in response to an ITB.
(5) "Board" means the Oregon State Board of Higher Education.
(6) "Change Order" or "Contract Amendment" means a written order issued by an Institution to the Contractor requiring a change in the Work within the general scope of the original Contract.
(7) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Bids or Proposals.
(8) "Competitive Process" means the process of procuring goods and services and construction-related services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that Contracts are award equitably and economically using various factors in determining such equitability and economy.
(9) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental, or other acquisition, by an Institution of personal property, services, including personal or professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Contract" does not include grants. "Contract" may also mean a purchase order, Price Agreement, or other Contract document in addition to an Institution's Solicitation Document and the accepted portions of a Solicitation Response.
(10) "Contract Officer" means the Vice President for Finance and Administration or his or her designee at an Institution or the Vice Chancellor for Finance and Administration or his or her designee with the authority to negotiate and execute Contracts.
(11) "Contract Price" means, as the context requires, the maximum monetary obligation that an Institution either will or may incur under a Contract, including bonuses, incentives and contingency amounts, Addenda, Change Orders, or approved alternates, if the Contractor fully performs under the Contract.
(12) "Contractor" means the Entity awarded a Contract to furnish an Institution goods, services, or Work.
(13) "Days" means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.
(14) "Disadvantaged Business Enterprise" means a small business concern as defined in ORS 200.005.
(15) "Disqualification or Disqualify" means the preclusion of an Entity from contracting with an agency of the State of Oregon in accordance with OAR 580-061-0160.
(16) "Electronic Solicitation Response" means a response to a Solicitation Document submitted to an Institution via the World Wide Web or some other internet protocol.
(17) "Emergency" means an unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, or threat to the public health or safety that requires prompt action to remedy the condition.
(18) "Emerging Small Business" means an Emerging Small Business as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.
(19) "Entity" means 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.
(20) "Grant" means:
(a) An agreement under which an Institution receives money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Institution and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or
(b) An agreement under which an Institution provides money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Institution is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.
(c) "Grant" does not include a Public Improvement Contract or a Contract for Emergency Work.
(21) “Historically Underrepresented Business” means Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses certified by the State of Oregon or self-certified, and firms certified federally or by another state or entity with substantially similar procedures to the State of Oregon.
(22) "Institution" or “Institutional” means a university under the authority of the Board, including the Chancellor's Office.
(23) "Invitation to Bid" (ITB) means a Solicitation Document for the solicitation of competitive, written, signed, and Sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.
(24) "Minority Business Enterprise" means a Minority Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the State of Oregon.
(25) "Opening" means the date, time, and place specified in the Solicitation Document for the public opening of written or electronically submitted Solicitation Responses.
(26) "Offeror" means the entity submitting a binding Solicitation Response.
(27) "OUS Retainer Program" means Contracts by which, pursuant to a Solicitation Document, multiple Contractors are authorized to provide specific materials to or perform specific services for an Institution(s). Contractors on an OUS Retainer Program may provide goods or services on a non-exclusive and as-needed basis. OUS Retainer Programs are administered centrally by the Vice Chancellor for Finance and Administration or designee.
(28) "Owner" means the Board, in its own right or on behalf of one of its Institutions as identified in the Solicitation Document, also known as the Oregon University System (OUS).
(29) "President" means the president of one of the Institutions and, in the case of the Chancellor's Office, the Chancellor. Where the term "Institution President" is used, it refers to the president of the Institution at issue.
(30) "Personal or Professional Services" means a Contract with an Entity whose primary purpose is to acquire specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). "Personal or Professional Services" under this definition does not include architects, engineers, planners, land surveyors, appraisers, construction managers, and similar professional consultants for construction work.
(31) "Price Agreement" means a nonexclusive agreement in which the Contractor agrees to provide specific items or services to an Institution at a set price during a specified period of time.
(32) "Proposal" means a binding competitive offer submitted in response to a Request for Proposals.
(33) "Proposer" means an Entity that submits a Proposal in response to a Request for Proposals.
(34) "Public Improvement" means a project for construction, reconstruction, or major renovation on real property by or for an Institution. "Public Improvement" does not include:
(a) Projects for which no funds of an Institution are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.
(35) "Public Improvement Contract" means a Contract for a Public Improvement. "Public Improvement Contract" does not include a Contract for Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.
(36) "Public Work" is defined by the Bureau of Labor and Industries (BOLI) in ORS 279C.800(6).
(37) "Qualified Rehabilitation Facility" means a nonprofit activity center or rehabilitation facility authorized by the Oregon Department of Administrative Services to provide goods or services in accordance with ORS 279.835 et seq.
(38) "Request for Information (RFI)" means a Solicitation Document seeking information regarding products or services that an Institution is interested in procuring.
(39) "Request for Proposals (RFP)" means a Solicitation Document to obtain competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.
(40) "Request for Qualifications" means a Solicitation Document issued by an Institution to which interested Contractors respond in writing by describing their experience with and qualifications to provide the services described in the Solicitation Document.

(41) “Request for Quotes” means a Solicitation Document to obtain competitive quotes to be used as a basis for making an acquisition or entering into a Contract when best value will be the award criteria.

(42) "Responsible Offeror" means an Entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.

(43) "Responsive Solicitation Response" means a Solicitation Response that has substantially complied in all material respects with the criteria outlined in a Solicitation Document.

(44) “Retainer Contract” means a Contract by which, pursuant to a Solicitation Document, multiple Contractors are authorized to provide specific supplies or equipment to or perform specific services for an Institution(s). Contractors on a Retainer Contract may provide goods or services on a non-exclusive and as-needed basis.

(45) “Sealed” means a Solicitation Response to an RFP or an ITB that has not been opened by the Institution or a Solicitation Response delivered by electronic means that has not been distributed beyond the Institution personnel responsible for receiving the electronically submitted Solicitation Response.

(46) "Signed or Signature" mean any Written mark, word, or symbol that is made or adopted by an Entity with the intent to be bound and that is attached to or logically associated with a Written document to which the Entity intends to be bound.

(47) "Single Seller" means the only Contractor of a particular product or service reasonably available.

(48) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Qualifications, Request for Information or any other written document issued or posted on the OUS procurement website by an Institution that outlines the required Specifications necessary to submit a Bid, Proposal, or other response.

(49) “Solicitation Response” means a binding offer submitted in response to a Solicitation Document.

(50) "Specifications" means a description of the physical or functional characteristics, or of the nature of the goods or services, including any requirement for inspecting, testing, or preparing the goods or services for delivery and the quantities or qualities of the goods or services to be furnished under a Contract. Specifications generally will state the result to be obtained and may describe the method and manner of performance.

(51) "Women Business Enterprise" means a Women Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(52) "Work" means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and carrying out and completion of all duties and obligations imposed by the Contract.

(53) “Written or Writing” means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or means. “Written” or "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters, and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0015

**Purchasing and Contract Records**

(1) Institutions will maintain records relating to all Institutional purchasing and contracting transactions in accordance with the requirements of the Secretary of State and OUS administrative rules.

(2) Documentation of all purchasing and contracting transactions will be made available for inspection by the public as outlined in applicable public records laws.

(3) Institutions will maintain records relating to all Institutional purchasing and contracting transactions that may include:

   (a) An executed Contract and any amendments or Change Orders;
   (b) The record of the actions used to develop the Contract;
   (c) A copy of the Solicitation Document, if any;
   (d) Any required findings or statement of justification for the selection of the Contractor or the procurement method used;
   (e) The record of any negotiation of the Specifications, the Work, the Contract Price and related Contract terms;
   (f) All information describing how the Contractor was selected, including the basis for awarding the Contract;
   (g) The names of Entities and cost estimates considered.

Stat. Auth.: ORS 351

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

580-061-0020

**Designation of Contract Officers**

Each Institutional Vice President for Finance and Administration or the Vice Chancellor for Finance and Administration will designate staff authorized to enter into Contracts and Public Improvement Contracts for the Institution.

(1) Institutions will maintain a list identifying Contract Officers and describing the types and Contract Price of Contracts and Public Improvement Contracts they are authorized to enter into. Institutions will provide an updated list annually to the Chancellor's Office. The Vice Chancellor for Finance and Administration may designate staff authorized to enter into Contracts and Public Improvement Contracts on behalf of all Institutions.

(2) Contracts or Public Improvement Contracts entered into by individuals not designated as authorized Contract Officers and unauthorized procurements or expenditures that do not follow the OUS Procurement and Contracting Code will be voidable at the sole discretion of the Institution. Institutions may take appropriate action in response to execution of Contracts or procurements contrary to this rule. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such Contracts or procurements.

(3) Authorized Contract Officers will be responsible for ensuring that the proper procedures are followed as outlined in chapter 580, Divisions 60, 61, 62, and 63.

(4) Unless otherwise specified in chapter 580, divisions 60, 61, 62, and 63, the Contracting Officer will perform all the duties of the Owner on behalf of the Board.
(5) The Institution President may, by Written agreement with the President of another Institution or the Chancellor, and after notice to the Chancellor, transfer such delegation to a person at another Institution.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0025
Policy Governing the Acquisition of Goods and Services available from Qualified Rehabilitation Facilities
Institutions will purchase goods and services from Qualified Rehabilitation Facilities in accordance with the provisions of ORS 279.835 to 279.855 and applicable administrative rules.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0030
Affirmative Action; General Policy
(1) The general policy of OUS Institutions will be to expand economic opportunities for Historically Underrepresented Businesses by offering them the contracting and subcontracting opportunities available through Institution Contracts. Notice of all Contracts over $25,000 procured through a Competitive Process will be provided to the Advocate for Minority, Women, and Emerging Small Business, unless otherwise provided, by fully completing the information set out on the OUS procurement website. Institutions are encouraged to unbundle contracts, when appropriate, to expand contract opportunities for Historically Underrepresented Businesses and Oregon-based businesses.
(2) OUS will not knowingly contract with or procure goods or services from any Entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex, or sexual orientation.
(3) Offerors will certify, as part of the Solicitation Response that such Offeror has not discriminated against Historically Underrepresented Businesses in obtaining any required subcontracts.
(4) Institutions will comply with the OUS Equity Contracting and Purchasing Policy and Data Reporting Procedures.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0035
Emerging Small Business Program
(1) The Board encourages participation of Emerging Small Businesses by creating an Emerging Small Business Program. The Emerging Small Business Program is limited to businesses that meet the definition in ORS 200.005(3) and that maintain a current certification issued by the State of Oregon. When conducting procurements, Institutions may implement the Emerging Small Business Program by methods including, but not limited to:
(a) Priority of Contract Award. In the event of a tie low Bid, when price is the sole determinative factor, give priority to a certified Emerging Small Business;
(b) Exclusive Emerging Small Business Opportunities. Institutions have the authority to create opportunities that are only open to certified Emerging Small Businesses. When an Institution issues a Solicitation Document, the Institution may determine that it is in the Institution's interest to limit the opportunity to only qualified and certified Emerging Small Businesses.

(c) Evaluation Criteria. An Institution may identify in a Solicitation Document that it will award additional evaluation points based on certified Emerging Small Business status.

(2) For Construction-Related Services where price is the determinative factor, if a Responsible Emerging Small Business' Responsive Bid is within one percent of the lowest Responsible Responsive Bid, the Institution will award the Contract to the Emerging Small Business.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0040
Sexual Harassment Policy
All Entities that wish to contract with Institutions will be notified on the OUS procurement website that the Board has adopted policies applicable to Contractors that prohibit sexual harassment and that the Contractor's company and employees are required to adhere to the Institution's policy prohibiting sexual harassment in their interactions with members of the Institution's community.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0045
Insurance or Bond Requirements
All Contractors will provide and maintain insurance or bonding as may be required by the Institution. Such insurance or bonding will remain in force throughout the term of the Contract, including any extensions.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0050
Interest on Overdue Charges
The policy of the Board is that an Institution pay any overdue account charge, in accordance with ORS 293.462, incurred by an Institution when payment for goods and services have not been reasonably made.

(1) Overdue claims will be those that have not been paid within 45 days from the latest of the following dates: The date of the receipt of the accurate invoice, the date of the initial billing statement if no invoice is received, the date all goods have been received, or the date the claim is made certain by agreement of the parties or by operation of law. However, overdue account charges will not accrue on any purchases made by an Institution during time of civil emergency or in the event of a natural disaster that prevents the timely payment of accounts. In such instances, accounts will be paid in as timely a manner as possible.

(2) The maximum overdue charge incidental to procurement of the goods or services will be at a rate of two-thirds of one percent per month, but not more than eight percent per annum.

(1) Brand-Name Specification. Institutions may specify brand names in the procurement of goods and services if that particular product or service has attributes not found in other goods and services of like kind. In addition, when specific design or performance specifications must be met for a good or service to be purchased, an Institution may specify a list of qualified goods or services by reference to the qualified goods or services of a particular contractor or potential contractor.

(2) Invitation to Bid Required Provision. If an Invitation to Bid is issued for a Contract for goods or services, the Institution will ensure that the following statement is contained in the Invitation to Bid: "Contractors will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract."

Basis for Awarding Contracts

Institutions will select Contractors and award Contracts based on such factors as are identified in the Solicitation Document and such other factors as are reasonable under the circumstances.

Contract Amendments (Including Change Orders and Extra Work) and Expired Contracts

An amendment for additional Work or goods that is reasonably related to the scope of Work under the original Contract, including Change Orders, extra work, field orders, or other change in the original Specifications that increases the original Contract Price or length of time, may be made with the Contractor without using a Competitive Process provided that the amendment does not materially alter such a Contract. An amendment that extends the Contract past the period set out in the Solicitation Document for anything other than completion of the Work contemplated in the original Contract as extended will require a new Competitive Process, unless approved by the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration for good cause. Expired Contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration or their designees.
580-061-0070
Solicitation Responses are Offers
(1) Offer and Acceptance. The Solicitation Response is the Offeror’s offer to enter into a
Contract that will be binding upon the Offeror for thirty (30) days, unless a different time frame
is specified in the Solicitation Document.
(2) The Solicitation Response will be a complete offer and fully responsive to the Solicitation
Document, unless Offerors are specifically authorized by the Solicitation Document to take
exceptions or to leave terms open to negotiation.
(3) Unless expressly authorized by the Solicitation Document, Offerors will not make their
Solicitation Response contingent upon the Institution's acceptance of Specifications or contract
terms that conflict with or are in addition to those in the Solicitation Document.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0075
Facsimile and Electronic Solicitation Responses
(1) Institutions may authorize submission of Solicitation Responses through facsimile or
electronic methods.
(2) If the Solicitation Response is in response to an RFP or ITB and the Solicitation Document
permits submission via facsimile or electronic means, the Institution must establish a method of
receiving, identifying, recording, and preserving the "Sealed" requirement of the Formal
Procurement.
(3) Solicitation Responses submitted through facsimile and electronic methods must contain
Written signatures indicating intent to be bound by the offer.
(4) Institutions may execute or open electronic submissions to verify receipt of documents prior
to the Closing, but will not verify responsiveness of Solicitation Responses.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0080
Solicitation Response Submissions
(1) Identification of Solicitation Responses. To ensure proper identification and special handling,
if any, Offeror must appropriately mark its Written Solicitation Response. The Institution will
not be responsible for the proper identification and handling of Solicitation Responses not
submitted in the designated manner or format as required in the Solicitation Document.
(2) Receipt of Solicitation Responses. It is the Offeror’s responsibility to ensure that Solicitation
Responses are received by the Institution at the required delivery point, prior to the Closing as
indicated in the Solicitation Document, regardless of the method used to submit or transmit the
Solicitation Response.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08
580-061-0085
Pre-Solicitation Response Conferences
(1) Pre-Solicitation Response conferences may be scheduled. Each pre-Solicitation Response conference will be described in the Solicitation Document as "voluntary" or "mandatory." If such a conference is designated as "mandatory," an Offeror must attend in order to submit a Solicitation Response.
(2) If the Offeror is an individual, the Offeror may authorize a representative other than himself/herself to attend the pre-Solicitation Response conference.
(3) Statements made by Institutional representatives at the pre-Solicitation Response conference will not be binding unless a Written Addendum to the Solicitation Document is issued.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0090
Offer Security
(1) The Institution may require in the Solicitation Document submission of a security. Security includes, but is not limited to, a surety bond from a surety company authorized to do business in the state of Oregon, cashier's check, certified check, or savings and loan secured check.
(2) The Solicitation Response security of all unsuccessful Offerors will be returned or released after a Contract has been executed and a performance bond provided (if such a bond is required), or after all Solicitation Responses have been rejected.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0095
Addenda to Solicitation Document
(1) The Institution may change a Solicitation Document by Written Addenda. Institutions will make reasonable efforts to notify potential Offerors of such Written Addenda by methods that may include, but are not limited to, publication of the Written Addenda on the OUS procurement website or requiring submission of a notice of interest by potential Offerors to receive Addenda.
(2) The Institution will issue the Written Addenda within a reasonable time prior to Closing to allow prospective Offerors to consider the Addenda in preparing their Solicitation Responses. The Institution may extend the Closing if it determines prospective Offerors need additional time to review and respond to Addenda.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0100
Clarification of ITBs and RFPs and Requests for Change
Requests for clarification or change of the ITB or RFP must be received by the Institution in writing by the date indicated in the ITB or RFP.
(1) Such request for clarification or change will include the reasons for the clarification or change, and any proposed changes to Specifications or provisions.
(2) The Institution will consider all requests for clarification or change and, if appropriate, amend the ITB or RFP by issuing Addenda.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0105
Pre-Closing Modifications or Withdrawal of Bids or Proposals
(1) Modifications. An Offeror may modify its Solicitation Response in Writing prior to the Closing. Any modification must include a statement that the modification amends and supersedes the prior Solicitation Response.
(2) Withdrawals. An Offeror may withdraw its Solicitation Response by Written notice, signed by an authorized representative of the Offeror, submitted to the individual and 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 Solicitation Response in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Institution.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0110
Formal Procurement receipt, Opening, and Recording of Bids and Proposals
(1) In all Formal Procurements an Institution will comply with the following:
(a) Receipt. An Institution will electronically or mechanically time-stamp or hand-mark each Bid or Proposal and any modification upon receipt. Except as provided in OAR 580-061-0075(2) the Institution will not open the Bid or Proposal or modification, but will store it in a secure place until Opening. If the Institution inadvertently opens a Bid or Proposal or a modification prior to the Opening, the Institution will reseal and store the opened Bid or Proposal or modification until the Opening.
(b) Disclosure. Unless otherwise specified in the Solicitation Document, the name of the Entity submitting a Bid or Proposal will be the only information that may be made public until notice of the intent to Award or an Award has been issued.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0115
Late Bids and Proposals, Late Withdrawals, and Late Modifications
Any Bid or Proposal, modification, or withdrawal received after the Closing is late. An Institution will not consider late Bids or Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120. However, Institutions may adopt an Institutional policy or procedure to accept late bids in circumstances that are determined to be in the best interests of the Institution if policy or procedure is stated in the Solicitation Document.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08
Mistakes

(1) Generally. To protect the integrity of the Competitive 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 a Solicitation Response for an error in judgment. If the Institution discovers certain mistakes in a Solicitation Response after Opening, but before award of the Contract, the Institution may take the following action:

(a) An Institution, in its sole discretion, 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 Solicitation Response 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 Solicitation Responses or the correct number of other documents required by the Solicitation Document; or
(B) Sign the Solicitation Response in the designated block, provided a Signature appears elsewhere in the Solicitation Response, evidencing an intent to be bound; or
(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Solicitation Response that the Offeror received the Addendum and intended to be bound by its terms, or the Addendum involved did not affect price, quality, or delivery.

(b) An Institution may correct a clerical error if the error is evident on the face of the Solicitation Response or other documents submitted with the Solicitation Response and the Offeror confirms the Institution's correction in Writing. A clerical error is an Offeror’s error in transcribing its Solicitation Response. Examples include, but are not limited to, typographical mistakes, errors in extending unit prices, transposition errors, and arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices will prevail over extended prices.

(c) An Institution may permit an Offeror to withdraw a Solicitation Response after Closing based on one or more clerical errors in the Solicitation Response 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 under subsection (b) of this subsection;
(D) That the Offeror acted in good faith in submitting a Solicitation Response that contained the claimed error and in claiming that the alleged error in the Solicitation Response exists;
(E) That the Offeror acted without gross negligence in submitting a Solicitation Response that contained a claimed error;
(F) That the Offeror will suffer substantial detriment if the Institution does not grant it permission to withdraw the Solicitation Response;
(G) That the Institution's or the public's status has not changed so significantly that withdrawal of the Solicitation Response 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) (a) of this rule will determine whether an Institution will permit an Offeror to withdraw its Solicitation Response after Closing. These criteria also will apply to the question whether an Institution will permit a Offeror to withdraw its Solicitation Response 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 Solicitation Response 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 Offeror or by resort to a new solicitation.

(3) Rejection for Mistakes. The Institution will reject any Offeror in which a mistake is evident on the face of the Solicitation Response and the intended correct Solicitation Response is not evident or cannot be substantiated from documents submitted with the Solicitation Response.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0125
Low Tie Bids
(1) Definition. Low Tie Bids are low tied Responsive Bids from Responsible Bidders that are identical in price, fitness, availability, and quality and that meet all the requirements and criteria set forth in the Solicitation Document.

(2) Award. In the event of a Low Tie Bid, the Institution will award the Contract based on the following order of precedence:
   (a) An Emerging Small Business that meets the definition in ORS 200.005(3) and that maintains a current certification issued by the State of Oregon;
   (b) An Entity whose principal offices or headquarters are located in Oregon;
   (c) If neither subsection (a) nor (b) apply, award of the Contract will be made by drawing lots.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0130
Rejection of Individual Solicitation Responses and Offerors
(1) An Institution may reject, in whole or in part, any Solicitation Response not in compliance with all prescribed Solicitation Response procedures, Contract provisions, and Specifications contained in the Solicitation Document or upon a Written finding by the Institution that it is in the public interest to do so.

(2) Reasons for rejection. An Institution may reject a Solicitation Response upon the Institution's findings that include, but are not limited to, the Solicitation Response:
   (a) Is contingent upon the Institution's acceptance of terms and conditions that differ from the Solicitation Document; or
   (b) Takes exception to the terms and conditions (including Specifications) set forth in the Solicitation Document; 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 goods or services that fail to meet the Specifications of the Solicitation Document; or
   (e) Is late; or
   (f) Is not in substantial compliance with the Solicitation Document; or

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(g) Is not in substantial compliance with all prescribed solicitation procedures; or
(h) Does not include the Solicitation Response security as required by the Solicitation Document; or
(i) Does not include an executed certification of non-discrimination in compliance with 580-061-0030 and compliance with Oregon tax laws.

(3) An Institution may reject an Offeror upon the Institution's findings that include, but are not limited to, the Offeror:
(a) Has not met any required mandatory prequalification;
(b) Has been disqualified pursuant to OAR 137-046-0210(3) (Disadvantaged Business Enterprise Disqualification);
(c) Has not met the requirements of the Emerging Small Business Program created in OAR 580-061-0035, if required in the Solicitation Document.
(d) That has been debarred in accordance with ORS 279B130 or 279C.440;
(e) Has been declared ineligible by the Commissioner of Bureau of Labor and Industries under ORS 279C.860;
(f) Has within the last five years been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;
(g) Is non-Responsible. 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 may consider:
(A) If the Offeror has appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities;
(B) If the Offeror has a satisfactory record of contract performance. The Institution may consider both private and public contracts in determining responsible performance under a contract;
(C) If the Offeror 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 a state agency. An Institution may find an Offeror non-Responsible based on the lack of integrity of any person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror’s performance of the Contract or a parent company, predecessor or successor person);
(D) If the Offeror is qualified legally to Contract with the Institution;
(E) If the Offeror 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 may base the determination of responsibility upon any available information or may find the Offeror non-Responsible.

(4) Form of Business Entity. For purposes of this rule, the Institution may investigate any Entity submitting a Solicitation Response. The investigation may include the Entity's officers, directors, owners, affiliates, or any other person acquiring ownership of the Entity to determine application of this rule.

(5) Notice. If an Offeror or a Solicitation Response is rejected in accordance with this rule, the Institution will provide written notice of such rejection to the Offeror. The notice will include the
grounds for rejection and a statement of the Offeror’s appeal rights and applicable appeal deadlines.
(a) If an Offeror wishes to appeal the decision to reject the Offeror or Solicitation Response, the Offeror must notify the Institution, in Writing, within three Days after receipt of the notification.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0135
Rejection of All Solicitation Responses
(1) Rejection. An Institution may reject all Bids or Proposals whenever the Institution finds it is in the Institution’s best interest to do so.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0140
Disposition of Solicitation Responses if Solicitation Cancelled
(1) Prior to Solicitation Response Opening. When a solicitation is cancelled prior to Opening, all Solicitation Responses received will be destroyed.
(2) After Solicitation Response Opening. When all Solicitation Responses are rejected, the Solicitation Responses received will be retained and become part of the Institution's permanent solicitation file.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0145
Protest of Contractor Selection, Contract Award, and Protest of Solicitation Document
(1) The purpose of this rule is to require adversely affected or aggrieved Offeror on an Institution solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the Institution’s selection or Award decision.
(2) Types of Protests. The following matters may be protested:
(a) A determination of responsibility or lack thereof;
(b) A determination of responsiveness or lack thereof;
(c) The rejection of a Solicitation Response, unless notice of rejection has been previously provided under OAR 580-061-0130(5);
(d) The content of a Solicitation Document;
(e) The selection of one or more Contractors. A protest may be submitted only by an Entity that can demonstrate that it has been or is being adversely affected by an Institution decision or the content of a Solicitation Document.
(3) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Institution within three (3) Days after the Award of a Contract or issuance of the notice of intent to Award the Contract, whichever occurs first. Protests must be clearly marked on the outside of the envelope with the title or the number of the Solicitation Response and that it is a protest to ensure that it is recognized and recorded.
(4) Content of Protest. An Offeror’s protest must fully specify the grounds for the protest and include all evidence that the protestor wishes the Vice Chancellor for Finance and Administration, Institution Vice President for Finance and Administration, or designee to consider. Failure to include any ground for the protest or any evidence in support of it will constitute a final, knowing, and voluntary waiver of the right to assert such ground or evidence. A protest must include a conspicuous marking identifying the type and nature of the protest.

(5) A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including, but not limited to, Specifications or Contract terms violates applicable law. The Institution will (upon altering the Solicitation Document in response to a protest) promptly transmit the revised Solicitation Document to all Offerors and extend the Closing where appropriate. The Institution may choose, in its sole discretion, to close the procurement process without making an Award and begin a new procurement process.

(6) A protest of the selection of one or more Contractors requires the protestor to demonstrate, as applicable:
   (a) That all higher-ranked Offerors were ineligible for selection or that the protestor would have been "next in line" to receive the Award and was eligible for selection; and
   (b) That the Offeror selected was ineligible.
   (c) In the case of a sole source procurement, that the Single Seller selected is not the only Contractor or consultant reasonably available to provide the personal or professional services, goods, services, Professional Consultant services as defined in OAR 580-061-0010, Construction-Related Services as defined in OAR 580-061-0010, or combination of Professional Consultant services and Construction-Related Services.

(7) A protest of the rejection of a Solicitation Response must demonstrate that the Institution's decision was materially in error or that the Institution committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the rejection.

(8) Response. The Vice Chancellor for Finance and Administration or the Institution Vice President for Finance and Administration, or their designee, will have the authority to settle or resolve a Written protest. A protest received after the time set out in the Solicitation Document will not be considered. The Vice Chancellor for Finance and Administration, or Vice President for Finance and Administration, or designee will issue a Written final agency order of the protest in a timely manner. If the protest is upheld, in whole or in part, the Institution may, in its sole discretion, either Award the Contract to the successful protestor or cancel the procurement or solicitation. Contract Award may be made prior to issuance of the final agency order if authorized by the Vice Chancellor for Finance and Administration, Vice President for Finance and Administration, or their designee.

(9) Judicial Review. Judicial review of the Institution's decision relating to a Contract Award protest will be available pursuant to the provisions of ORS 183.480 et seq.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0150

Right to Inspect Plant
The Institution may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any subcontractor that is related to the performance of any prospective Contract or Awarded Contract.
Invitation to Bid and Request Proposal Negotiations

(1) The Institution may negotiate with the lowest-cost Bidders after determining that the Bids are Responsive and from Responsible Bidders.

(2) The Institution may, if it has given notice in the Solicitation Document, commence negotiations in accordance with sections (3) and (4) of this rule with Proposers in the competitive range. For purposes of this rule “competitive range” means the highest-ranked Proposers based on evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Solicitation Document.

(3) If the Institution chooses to enter into discussions with and receive best and final Proposals, the Institution will proceed as follows:

(a) The Institution will initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the competitive range regarding their Proposals with respect to the provisions of the Solicitation Document that the Institution identified in the Solicitation Document as the subject of discussions.

(b) The Institution may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (3), but need not conduct the same amount of discussions with each eligible Proposer. The Institution may terminate discussions with any eligible Proposer at any time. However, the Institution will offer all eligible Proposers the same opportunity to discuss their Proposals with the Institution before the Institution notifies eligible Proposers of the date and time pursuant to subsection (d) that best and final Proposals will be due.

(c) The Institution may adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Solicitation Document.

(d) If best and final Proposals are required, the Institution will establish a common date and time by which Proposers must submit best and final Proposals. Best and final Proposals will be submitted only once, provided, however, the Institution may make a written determination that it is in the Institution's best interest to conduct additional discussions, negotiations, or change the Institution's requirements and require another submission of best and final Proposals. The Institution will evaluate Proposals as modified.

(4) Negotiations.

(a) The Institution may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers.

(b) The Institution may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Solicitation Document. Accordingly, Proposers will not submit and the Institution will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Solicitation Document.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08
580-061-0160

Disqualification from Consideration for Award of Contracts

(1) An Institution may disqualify an Entity from consideration for award of Institution Contracts for the reasons listed in subsection (2) of this section after providing the Entity with notice and a reasonable opportunity to be heard.

(a) All OUS Institutions may rely upon a disqualification of an Entity by another Institution or exclusion by the federal government or the State of Oregon. The Chancellor's Office will maintain a current roster for Entities that have been disqualified.

(b) In lieu of the disqualification process described in this rule, an Institution contracting for a Public Improvement may petition the Construction Contractors Board to disqualify an Entity from consideration for award of the Institution's Public Improvement Contracts for the reasons listed in subsection (2) of this rule.

(2) An Entity may be disqualified from consideration for Award of a Contract for any of the following reasons:

(a) A primary employee of the Entity has been convicted of a criminal offense as an incident of obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) A primary employee of the Entity has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the person's responsibility for the Entity;

(c) A primary employee of the Entity has been convicted under state or federal antitrust statutes;

(d) A primary employee of the Entity has committed a violation of a contract provision that is regarded by an Institution or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Entity may not be considered to be a basis for disqualification;

(e) The Entity does not carry workers' compensation or unemployment insurance as required by statute.

(3) An Institution will issue a Written decision to disqualify an Entity under this section. The decision will:

(a) State the reasons for the action taken; and

(b) Inform the disqualified Entity of the appeal rights of the Entity under ORS 279C.445 and 279C.450.

(4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise furnished immediately to the disqualified Entity.

(5) Appeal of Disqualification. An Entity who wishes to appeal disqualification must, within three (3) business days after receipt of notice of disqualification, notify the Institution in Writing that the Entity appeals the disqualification. Immediately upon receipt of the notice of appeal, the Institution will notify the OUS Vice Chancellor of Finance and Administration, or designee.

(6) The OUS Vice Chancellor of Finance and Administration, or designee, will conduct the appeal generally consistent with the procedures set forth in ORS 279C.450. The OUS Vice Chancellor of Finance and Administration, or designee, may share the final outcome of the appeal with all Institutions.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08
DIVISION 62
PURCHASING AND CONTRACTS FOR PERSONAL OR PROFESSIONAL SERVICES AND GOODS

580-062-0000
Definitions
All capitalized terms in chapter 580, division 62 have the meanings set forth in OAR 580-061-0010 unless the context requires otherwise or except as stated.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0005
Procurement and Contracting Procedures
The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of personal or professional services or goods and services.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0010
Procurement Card
The Chancellor's Office may maintain procurement card services for the benefit of the Institutions. The Controller's Office of the Chancellor's Office will publish policies governing use of the procurement card.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0015
Personal/Professional Services, Goods, and Services Contract Procurement Thresholds
(1) When procuring personal or professional services, goods, or services, not including services from Professional Consultants as defined in chapter 580, division 63, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated contract price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules. Institutions may establish lower procurement thresholds for specific procurements or as an Institutional policy or procedure.
(a) $25,000 or less – Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement. (b) $25,000.01 to $150,000 – Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.
(c) Greater than $150,000 – Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.
(2) Notwithstanding subsection (1), if the source of the funding for the procurement requires a
different procurement method, the Institution may comply with the procurement method required
by the funding source.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0020
Methods of Procurement
Institutions will use the following methods of procurement when procuring personal or
professional services or goods and services.
(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to
provide personal or professional services or goods and services.
(2) Informal Procurement. A Competitive Process where the Institution posts an advertisement of
the opportunity on the OUS procurement website for a reasonable time necessary to obtain at
least three (3) Solicitation Responses. The Institution may also directly contact prospective
Offerors. If the notice has been posted for a reasonable time period and fewer than three
Solicitation Responses have been submitted, the Institution may enter into a Contract with a
Responsible Offeror based on the Specifications contained in the Solicitation Document.
(3) Formal Procurement. A Competitive Process where the Institution:
(a) Creates a Solicitation Document that contains the procurement procedures and necessary
Specifications.
(b) Publishes a notice of the procurement on the OUS procurement website and, at the discretion
of the Institution, in a trade periodical, newspaper of general circulation, or other historically
underrepresented business-targeted periodicals, Institution website, or other medium for
advertising. The notice must specify when and where the Solicitation Document may be obtained
and the Closing Date/Time. The notice must be published for a duration reasonable under the
circumstances for the procurement.
(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through
0160.
(4) Emergency Procurement. The Chancellor, Vice Chancellor of Finance and Administration,
Institution President, or Vice President of Finance and Administration, or designee may declare
an Emergency when such a declaration is deemed appropriate. The reasons for the declaration
will be documented and will include justifications for the procedure used to select the Entity for
a Contract within the scope of the Emergency declaration. After the Institution President,
Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract
with any qualified Entity for services included in the scope of the Emergency. The Institution
will maintain appropriate records of negotiations carried out as part of the contracting process.
(5) Retainer. Institutions may conduct a Formal Procurement to enter into Retainer Contracts
with multiple Entities to provide personal or professional services or goods and services at
contracted rates of compensation or based on pre-qualifications.
(6) Alternative Processes. Notwithstanding the foregoing procedures, the Institution Contract
Officer may authorize alternative procurement methods that provide a Competitive Process to
two or more Entities to contract with the Institution and meet the following objectives:
(a) Responds to innovative business and market methods; or
(b) Contributes to Institution productivity improvement and process redesign; or
(c) Results in comprehensive cost-effectiveness and productivity for the Institution.
(7) Exempt. Institutions need not follow, regardless of value, a Competitive Process when seeking or acquiring or paying for the following goods and services:

(a) Educational services.
(b) Advertising and media services, excluding consulting services.
(c) Price-regulated goods and services, including utilities, where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.
(d) Goods or services under federal contracts. When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, Institutions may purchase the goods and services in accordance with the federal contract. In addition, Institutions may purchase specific equipment that is only available from one source or use specific Entities that are expressly required under the terms of the contract.
(e) Copyrighted materials. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.
(f) Investment contracts and retirement plan services, excluding consulting services.
(g) Food and food-related products.
(h) Maintenance services directly from the contractor providing the goods.
(i) Used personal property.
(j) Goods purchased for resale to outside entities.
(k) Goods or services related to intercollegiate athletic programs.
(l) Cadavers or cadaveric organs.
(m) Hotel sites for large conferences and workshops.
(n) Dues, registrations, and membership fees.
(o) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, and similar commodities and products and the transportation thereof.
(p) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.
(q) Repair and overhaul of goods or equipment.
(r) Goods or services purchased in foreign countries.
(s) Insurance and insurance-related contracts, not including consulting or brokerage contracts.
(t) Grants, including Grant applications and proposals.
(u) Contracts for legal services, including professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which an Institution is or may become interested.
(v) Contracts entered into, issued, or established in connection with:
(A) The incurring of debt by an Institution, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any associated Contracts, regardless of whether the obligations that the Contracts establish are general, special, or limited;
(B) The making of program loans and similar extensions or advances of funds, aid, or assistance by an Institution to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or
(C) The investment of funds by an Institution as authorized by law and other financial transactions of an Institution that by their character cannot practically be established under the Competitive Process.
(D) Grant-funded projects where professional or personal service providers are named in Grant or identified in the Grant budget, unless Institution determines it is in its best interest to require a Competitive Process.

(w) Contracts for employee benefit plans as authorized by law.

(x) Services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, veterinarians, and those with specific license to administer treatments for the health and well-being of people or animals.

(y) Artists, performers, photographers, graphic designers, website design, and speakers.

(z) Sponsorship agreements for Institution events or facilities.

(8) Sole Source. A process where the Institutional President, the Chancellor or designee has made a Written determination that due to special needs or qualifications, only a Single Seller is reasonably available to provide such personal or professional services or goods or services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

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

(b) An Entity may protest the Institution's determination that the personal or professional services or goods or services are available from a Single Seller in accordance with OAR 580-061-0145.

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

(9) Special Entity. (a) Institutions may purchase goods or services, without using a Competitive Process, if purchasing from a federal, state, local governmental agency, public corporation (including, but not limited to, OHSU), or a state Qualified Rehabilitation Facility certified by the Oregon Department of Human Services or the Oregon State Procurement Office.

(b) Institutions may participate in cooperative procurements with other contracting agencies or Entities or utilize other public contracts or cooperatively-procured contracts if it is determined, in Writing, that the solicitation and award process used to award that Contract was reasonably equivalent to the respective processes established in these rules, including notice during solicitation process that the contract resulting from the procurement may be utilized by other entities. Determinations regarding equivalency and adequacy of processes for cooperating procurements will be made by Institution Contract Officer.

(10) Special Procurement. A special procurement is an exemption from competitive procedures that the Finance and Administration Committee of the Board determines is appropriate because it: (A) Is reasonably expected to result in substantial cost savings to the Institution or to the public; or (B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with others processes described in this rule.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08
DIVISION 61

OUS PROCUREMENT AND CONTRACTING CODE

580-061-0000

Code of Ethics

(1) The following Code of Ethics will apply to Oregon University System employees in relation to chapter 580, divisions 60, 61, 62, and 63. Employees will:
(a) Give first consideration to the objectives and policies of the Board, OUS, and the Institution;
(b) Strive to obtain the best value for expenditures;
(c) Fairly consider prospective Contractors insofar as state or federal statutes and institutional rules and policies require;
(d) Conduct business in an atmosphere of good faith;
(e) Demand honesty in representations made by prospective Contractors;
(f) Promote competition by encouraging the participation of Oregon businesses, emerging small and minority-owned and women-owned businesses, and Qualified Rehabilitation Facilities;
(g) Comply with the applicable provisions of ORS Chapter 244 and other applicable rules and policies on conflict of interest that may be more restrictive;
(h) Refrain from having financial interests incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in the Oregon University System's Internal Management Directives and other applicable rules and policies;
(i) Receive the written consent of the originator of proprietary ideas and designs before using them; and
(j) Foster fair, ethical, and legal trade practices.
(k) Execute the OUS Conflict of Interest Statement before any person may participate in the evaluation or selection of a Contractor or vendor under a Formal Procurement process.
(L) On an annual basis, sign a statement that the employee has reviewed and will comply with the OUS Code of Ethics.

(2) This code is for the Oregon University System's internal use only and creates no obligations enforceable by Contractors, Proposers, Bidders, or other parties doing business with an Institution, nor may it be used by Contractors, Proposers, Bidders, or other parties doing business with an Institution who are challenging actions taken by an Institution or its officers, employees, or agents. This code may not be the only statement on ethics applicable to an employee.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0005

Applicable Model Public Contract Rules

The Attorney General's Model Public Contract Rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 are generally inapplicable to the contracting activities of Institutions unless specifically referenced and adopted herein.
580-061-0010 Definitions

The following Definitions will apply to chapter 580, divisions 60, 61, 62, and 63, unless the context requires otherwise:

1. "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and distributed to all posted on the OUS procurement website for access by all interested Offerors, Bidders, or Proposers.

2. "Award" or "Awarding" means, as the context requires, identifying the Entity with whom the Institution intends to enter into a Contract following the resolution of any protest of the selection of that Entity and the completion of all Contract negotiations.

3. "Bid" means an offer, binding on the Bidder and submitted in response to an ITB.

4. "Bidder" means an Entity that submits a Bid in response to an ITB.

5. "Board" means the Oregon State Board of Higher Education.

6. "Change Order" or "Contract Amendment" means a written order issued by an Institution to the Contractor requiring a change in the Work within the general scope of the original Contract.

7. "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Bids or Proposals.

8. "Competitive Process" means the process of procuring goods and services and construction-related services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that Contracts are award equitably and economically using various factors in determining such equitability and economy.

9. "Contract" means a contract for sale or other disposal, or a purchase, lease, rental, or other acquisition, by an Institution of personal property, services, including personal or professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Contract" does not include grants. "Contract" may also mean a purchase order, Price Agreement, or other Contract document in addition to an Institution's Solicitation Document and the accepted portions of a Solicitation Response, Bid, or Proposal.

10. "Contract Officer" means the Vice President for Finance and Administration or his or her designee at an Institution or the Vice Chancellor for Finance and Administration or his or her designee with the authority to negotiate and execute Contracts.

11. "Contract Price" means, as the context requires, the maximum monetary obligation that an Institution either will or may incur under a Contract, including bonuses, incentives and contingency amounts, Addenda, Change Orders, or approved alternates, if the Contractor fully performs under the Contract.

12. "Contractor" means the Entity awarded a Contract to furnish an Institution goods, services, or Work.

13. "Days" means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

14. "Disadvantaged Business Enterprise" means a small business concern as defined in ORS 200.005.
(15) "Disqualification or Disqualify" means the preclusion of an Entity from contracting with an agency of the State of Oregon in accordance with OAR 580-061-0160.
(16) "Electronic Solicitation ResponseBid or Proposal" means a response to a Solicitation Document submitted to an Institution via the World Wide Web or some other internet protocol.
(17) "Emergency" means an unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, or threat to the public health or safety that requires prompt action to remedy the condition.
(18) "Emerging Small Business" means an Emerging Small Business as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.
(19) "Entity" means 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.
(20) "Facsimile" means a document that has been transmitted to and received by an Institution in a format that is capable of being received via a device commonly known as a facsimile machine.
(21) "Grant" means:
(a) An agreement under which an Institution receives money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Institution and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or
(b) An agreement under which an Institution provides money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Institution is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.
(c) "Grant" does not include a Public Improvement Contract or a Contract for Emergency Work.
(22) "Historically Underrepresented Business" means Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses certified by the State of Oregon or self-certified, and firms certified federally or by another state or entity with substantially similar procedures to the State of Oregon.
(23) "Institution" or “Institutional” means a university under the authority of the Board, including the Chancellor's Office.
(24) "Invitation to Bid" (ITB) means a Solicitation Document for the solicitation of competitive, written, signed, and Sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.
(25) "Minority Business Enterprise" means a Minority Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.
(25) "Opening" means the date, time, and place specified in the Solicitation Document for the public opening of written or electronically sealed Bids or Proposals submitted Solicitation Responses.

(26) "Offeror" means the entity submitting a binding Solicitation Response.

(27) "OUS Retainer Program" means Contracts by which, pursuant to a Solicitation Document, multiple Contractors are authorized to provide specific materials to or perform specific services for an institution(s). Contractors on the OUS Retainer Program may provide goods or services on a non-exclusive and as-needed basis. OUS Retainer Programs are administered centrally by the Vice Chancellor for Finance and Administration or designee.

(28) "Owner" means the State of Oregon acting by and through the Board, in its own right or on behalf of one of its Institutions as identified in the Solicitation Document, also known as the Oregon University System (OUS).

(29) "President" means the president of one of the Institutions and, in the case of the Chancellor's Office, the Chancellor. Where the term "Institution President" is used, it refers to the president of the Institution at issue.

(30) "Personal or Professional Services" means a Contract with an Entity whose primary purpose is to acquire specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). "Personal or Professional Services" under this definition does not include an architects, engineers, planners, land surveyors, appraisers, construction managers, and similar professional consultants for construction work.

(31) "Price Agreement" means a nonexclusive agreement in which the Contractor agrees to provide specific items or services to an Institution at a set price during a specified period of time.

(32) "Proposal" means a binding competitive offer submitted in response to a Request for Proposals.

(33) "Proposer" means an Entity that submits a Proposal in response to a Request for Proposals.

(34) "Public Improvement" means a project for construction, reconstruction, or major renovation on real property by or for an Institution. "Public Improvement" does not include:

(a) Projects for which no funds of an Institution are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(35) "Public Improvement Contract" means a Contract for a Public Improvement. "Public Improvement Contract" does not include a Contract for Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(36) "Public Work" is defined by the Bureau of Labor and Industries (BOLI) in ORS 279C.800(6).

(37) "Qualified Rehabilitation Facility" means a nonprofit activity center or rehabilitation facility authorized by the Oregon Department of Administrative Services to provide goods or services in accordance with ORS 279.835 et seq.

(38) "Request for Information (RFI)" means a Solicitation Document seeking information regarding products or services that an Institution is interested in procuring.
(3937) “Request for Proposals (RFP)” means a Solicitation Document to obtain written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.

(4038) “Request for Qualifications (RFQ)” means a Solicitation Document issued by an Institution to which interested Contractors respond in writing by describing their experience with and qualifications to provide the services, personal services or architectural, engineering or land surveying services, or related services described in the Solicitation Document.

(41) “Request for Quotes” means a Solicitation Document to obtain competitive quotes to be used as a basis for making an acquisition or entering into a Contract when best value will be the award criteria.

(4239) "Responsible Bidder or Proposer Offeror" means an Entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.

(4340) "Responsive Solicitation Response Bid or Proposal" means a Solicitation Response Bid or Proposal that has substantially complied in all material respects with the criteria outlined in a Solicitation Document.

(4441) "Retainer Contract" means a Contract by which, pursuant to a Request for Proposals or Invitation to Bid, multiple Contractors are authorized to provide specific supplies or equipment to or perform specific services for an Institution(s). Contractors on a Retainer Contract may provide goods or services on a non-exclusive and as-needed basis. “Retainer Contract” means a Contract by which, pursuant to a Solicitation Document, multiple Contracts are authorized to provide specific supplies or equipment to or perform specific services for an Institution(s). Contractors on a Retainer Contract may provide goods or services on a non-exclusive or as-needed basis.

(45) “Sealed” means a Solicitation Response to an RFP or an ITB that has not been opened by the Institution or a Solicitation Response delivered by electronic means that has not be distributed beyond the Institution personnel responsible for receiving the electronically-submitted Solicitation Response.

(4642) "Signed or Signature" mean any Written mark, word, or symbol that is made or adopted by an Entity with the intent to be bound and that is attached to or logically associated with a Written document to which the Entity intends to be bound.

(4743) "Single Seller" means the only Contractor of a particular product or service reasonably available.

(4844) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Qualifications, Request for Information or any other written document issued or posted on the OUS procurement website by an Institution that outlines the required Specifications necessary to submit a Bid, Proposal, or other response.

(49) “Solicitation Response” means a binding offer submitted in response to a Solicitation Document.

(5045) "Specifications" means a description of the physical or functional characteristics, or of the nature of the goods or services, including any requirement for inspecting, testing, or preparing the goods or services for delivery and the quantities or qualities of the goods or services to be furnished under a Contract. Specifications generally will state the result to be obtained and may describe the method and manner of performance.
(5146) "Women Business Enterprise" means a Women Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(5247) "Work" means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and carrying out and completion of all duties and obligations imposed by the Contract.

(5348) "Written or Writing" means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or means. “Written” or "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters, and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 10-2012, f. & cert. ef. 6-18-12

580-061-0015
Purchasing and Contract Records

(1) Institutions will maintain records relating to all Institutional purchasing and contracting transactions in accordance with the requirements of the Secretary of State and OUS administrative rule.

(2) Documentation of all purchasing and contracting transactions will be made available for inspection by the public as outlined in applicable public records laws.

(3) Institutions will maintain records relating to all Institutional purchasing and contracting transactions that may include:
   (a) An executed Contract and any amendments or Change Orders;
   (b) The record of the actions used to develop the Contract;
   (c) A copy of the Solicitation Document, if any;
   (d) Any required findings or statement of justification for the selection of the Contractor or the procurement method used;
   (e) The record of any negotiation of the Specifications, the Work, the Contract Price and results related Contract terms;
   (f) All information describing how the Contractor was selected, including the basis for awarding the Contract;
   (g) The names of Entities and cost estimates considered.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0020
Designation of Contract Officers

Each Institutional Vice President for Finance and Administration or the Vice Chancellor for Finance and Administration will designate staff authorized to enter into Contracts and Public Improvement Contracts for the Institution.

(1) Institutions will maintain a list identifying Contract Officers and describing the types and Contract Price of Contracts and Public Improvement Contracts they are authorized to enter into.
Institutions will provide an updated list annually to the Chancellor's Office. The Vice Chancellor for Finance and Administration may designate staff authorized to enter into Contracts and Public Improvement Contracts on behalf of all Institutions.

(2) Contracts or Public Improvement Contracts entered into by individuals not designated as authorized Contract Officers and unauthorized procurements or expenditures that do not follow the OUS Procurement and Contracting Code will be voidable at the sole discretion of the Institution. Institutions may take appropriate action in response to execution of Contracts or procurements contrary to this rule. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such Contracts or procurements.

(3) Authorized Contract Officers will be responsible for ensuring that the proper procedures are followed as outlined in chapter 580, Divisions 60, 61, 62, and 63.

(4) Unless otherwise specified in chapter 580, divisions 60, 61, 62, and 63, the Contracting Officer will perform all the duties of the Owner on behalf of the Board.

(5) The Institution President may, by Written agreement with the President of another Institution or the Chancellor, and after notice to the Chancellor, transfer such delegation to a person at another Institution.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

Policy Governing the Acquisition of Goods and Services available from Qualified Rehabilitation Facilities

Institutions will purchase goods and services from Qualified Rehabilitation Facilities in accordance with the provisions of ORS 279.835 to 279.855 and applicable administrative rules.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

Affirmative Action; General Policy

(1) The general policy of OUS Institutions will be to expand economic opportunities for Historically Underrepresented BusinessesMinority, Women or Emerging Small Business Enterprises by offering them the contracting and subcontracting opportunities available through Institution Contracts. Notice of all Contracts over $25,000 procured through a Competitive Process will be provided to the Advocate for Minority, Women, and Emerging Small Business, unless otherwise provided, by fully completing the information set out on the OUS procurement website. Institutions are encouraged to unbundle contracts, when appropriate, to expand contract opportunities for Historically Underrepresented BusinessesMinority, Women or Emerging Small Business Enterprise Businesses and Oregon-based businesses.

(2) OUS will not knowingly contract with or procure goods or services from any Entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex, or sexual orientation.

(3) Bidders and ProposersOfferors will certify, as part of the Solicitation ResponsesBids or Proposals that such OfferorBidder or Proposer has not discriminated against Historically
Underrepresented Businesses

Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

(4) Institutions will comply with the OUS Equity Contracting and Purchasing Policy and Data Reporting Procedures. On an annual basis, Institution Presidents will report to the Board statistical information regarding the number of Contracts awarded and the cumulative dollar amount of Contracts awarded to Minority Business Enterprises, Women Business Enterprises, Emerging Small Businesses, and Oregon based businesses. The report will include information describing Institutional programs or initiatives to expand contracting opportunities to Minority, Women, Emerging Small Businesses, and Oregon based businesses.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 10-2012, f. & cert. ef. 6-18-12

580-061-0035

Emerging Small Business Program

(1) The Board encourages participation of Emerging Small Businesses by creating an Emerging Small Business Program. The Emerging Small Business Program is limited to businesses that meet the definition in ORS 200.005(3) and that maintain a current certification issued by the State of Oregon Department of Consumer and Business Services. When conducting procurements, Institutions may implement the Emerging Small Business Program by methods including, but not limited to:

(a) Priority of Contract Award. In the event of a tie low Bid, when price is the sole determinative factor, give priority to a certified Emerging Small Business;

(b) Exclusive Emerging Small Business Opportunities. Institutions have the authority to create opportunities that are only open to certified Emerging Small Businesses. When an Institution issues a Solicitation Document, the Institution may determine that it is in the Institution's interest to limit the opportunity to only qualified and certified Emerging Small Businesses.

(c) Evaluation Criteria. An Institution may identify in a Solicitation Document that it will award additional evaluation points based on certified Emerging Small Business status.

(2) For Construction-Related Services where price is the determinative factor, if a Responsible Emerging Small Business' Responsive Bid is within one percent of the lowest Responsible Responsive Bid, the Institution will award the Contract to the Emerging Small Business.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08
580-061-0040
Sexual Harassment Policy
All Entities that wish to contract with Institutions will be notified on the OUS procurement website that the Board has adopted policies applicable to Contractors that prohibit sexual harassment and that the Contractor's company and employees are required to adhere to the Institution's policy prohibiting sexual harassment in their interactions with members of the Institution's community.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0045
Insurance or Bond Requirements
All Contractors will provide and maintain insurance or bonding as may be required by the Institution. Such insurance or bonding will remain in force throughout the term of the Contract, including any extensions.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0050
Interest on Overdue Charges
The policy of the Board is that an Institution pay any overdue account charge, in accordance with ORS 293.462, incurred by an Institution when payment for goods and services have not been reasonably made.
(1) Overdue claims will be those that have not been paid within 45 days from the latest of the following dates: The date of the receipt of the accurate invoice, the date of the initial billing statement if no invoice is received, the date all goods have been received, or the date the claim is made certain by agreement of the parties or by operation of law. However, overdue account charges will not accrue on any purchases made by an Institution during time of civil emergency or in the event of a natural disaster that prevents the timely payment of accounts. In such instances, accounts will be paid in as timely a manner as possible.
(2) The maximum overdue charge incidental to procurement of the goods or services will be at a rate of two-thirds of one percent per month, but not more than eight percent per annum.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0055
(1) Brand-Name Specification. Institutions may specify brand names in the procurement of goods and services if that particular product or service has attributes not found in other goods and services of like kind. In addition, when specific design or performance specifications must be met for a good or service to be purchased, an Institution may specify a list of qualified goods or services by reference to the qualified goods or services of a particular contractor or potential contractor.
(2) Invitation to Bid Required Provision. If an Invitation to Bid is issued for a Contract for goods or services, the Institution will ensure that the following statement is contained in the Invitation to Bid: "Contractors will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract."
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0060
Basis for Awarding Contracts
Institutions will select Contractors and award Contracts based on such factors as are identified in the Solicitation Document and such other factors as are reasonable under the circumstances.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0065
Contract Amendments (Including Change Orders and Extra Work) and Expired Contracts
An amendment for additional Work or goods that is reasonably related to the scope of Work under the original Contract, including Change Orders, extra work, field orders, or other change in the original Specifications that increases the original Contract Price or length of time, may be made with the Contractor without using a Competitive Process provided that the amendment does not materially alter such a Contract. An amendment that extends the Contract past the period set out in the Solicitation Document for anything other than completion of the Work contemplated in the original Contract as extended, will require a new Competitive Process, unless approved by the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration for good cause. Expired Contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration or their designees, subject to receiving all required approvals.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0070
Solicitation ResponsesBids or Proposal Bids are Offers
(1) Offer and Acceptance. The Bid or ProposalSolicitation Response is the Bidder's or Proposer's offer to enter into a Contract that will be binding upon the Bidder or Proposer for thirty (30) days, unless a different time frame is specified in the Solicitation Document. An Institution's award of the Contract constitutes acceptance of the offer and binds the Bidder or Proposer.
(2) The Solicitation ResponseBid or Proposal will be a complete offer and fully responsive to the Solicitation Document, unless OfferorsBidders or Proposers are specifically authorized by the Solicitation Document to take exceptions or to leave terms open to negotiation.
(3) Unless expressly authorized by the Solicitation Document, OfferorsBidders or Proposers will not make their Solicitation ResponseBid or Proposal contingent upon the Institution's acceptance of Specifications or contract terms that conflict with or are in addition to those in the Solicitation Document.
580-061-0075
Facsimile and Electronic Solicitation ResponsesBids and Proposals
(1) Institutions may authorize submission of Solicitation ResponsesBids or Proposals through facsimile or electronic methods, if:
(2a) If the Solicitation Response is in response to an RFP or ITB and the Solicitation Document permits submission via facsimile or electronic means, and (b) the Institution must establish methods of receiving, identifying, recording, and preserving the "sealed" requirement of the Formal Procurement Competitive Process.
(3c) Solicitation ResponsesBids or Proposals submitted through facsimile and electronic methods must contain Written signatures indicating intent to be bound by the offer.
(42) Institutions may execute or open electronic submissions to verify receipt of documents prior to the Closing, but will not verify responsiveness of Solicitation Responses.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0080
Bid or Proposal Solicitation Response Submissions
(1) Identification of Bids or Proposals. Solicitation Responses. To ensure proper identification and special handling, if any, Offeror must appropriately mark its Written Solicitation Response. Bids or Proposals will be submitted in a sealed envelope appropriately marked or in the envelope provided by the Institution, whichever is applicable. The Institution will not be responsible for the proper identification and handling of Bids or Proposals Solicitation Responses not submitted in the designated manner or format as required in the Solicitation Document.
(2) Receipt of Bids or Proposals. It is the Bidder's or Proposer's responsibility to ensure that Bids or Proposals are received by the Institution at the required delivery point, prior to the Closing as indicated in the Solicitation Document, regardless of the method used to submit or transmit the Bid or Proposal Solicitation Response.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0085
Pre-Solicitation Response Bid and Pre-Proposal Conferences
(1) Pre-Solicitation Response Bid or pre-Proposal conferences may be scheduled. Each pre-Solicitation Bid or pre-Proposal conference will be described in the Solicitation Document as "voluntary" or "mandatory." If such a conference is designated as "mandatory," an OfferorBidder or Proposer must attend in order to submit a Solicitation ResponseBid or Proposal.
(2) If the OfferorBidder or Proposer is an individual, the OfferorBidder or Proposer may authorize a representative other than himself/herself to attend the pre-Solicitation Bid or pre-Proposal conference.
(3) Statements made by Institutional representatives at the pre-Solicitation Bid or pre-Proposal conference will not be binding unless a Written Addendum to the Solicitation Document is issued.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0090
Bid or Proposal Offer Security
(1) The Institution may require in the Solicitation Document submission of a Bid or Proposal security. Security includes, but is not limited to, a surety bond from a surety company authorized to do business in the state of Oregon, cashier's check, certified check, or savings and loan secured check.
(2) The Solicitation Response Bid or Proposal security of all unsuccessful Offerors Bidders or Proposers will be returned or released after a Contract has been executed and a performance bond provided (if such a bond is required), or after all Solicitation Responses Bids or Proposals have been rejected.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0095
Addenda to Solicitation Document
(1) The Institution may change a Solicitation Document by Written Addenda. Institutions will make reasonable efforts to notify potential Offerors Bidders or Proposers of such Written Addenda by methods that may include, but are not limited to, publication of the Written Addenda on the OUS procurement website or requiring submission of a notice of interest by potential Offerors Bidders or Proposers to receive Addenda.
(2) The Institution will issue the Written Addenda within a reasonable time prior to Closing to allow prospective Offerors Bidders or Proposers to consider the Addenda in preparing their Solicitation Responses Bids or Proposals. The Institution may extend the Closing if it determines prospective Offerors Bidders or Proposers need additional time to review and respond to Addenda.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0100
Clarification of ITBs and RFPs Solicitation Document and Requests for Change
Unless a different deadline is specified in the Solicitation Document, Requests for clarification or change of the ITB or RFP Solicitation Document must be received by the Institution in writing by the date indicated in the ITB or RFP at least ten (10) days prior to the Closing.
(1) Such request for clarification or change will include the reasons for the clarification or change, and any proposed changes to Specifications or provisions.
(2) The Institution will consider all requests for clarification or change and, if appropriate, amend the ITB or RFP Solicitation Document by issuing Addenda.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0105
Pre-Closing Modifications or Withdrawal of Bids or Proposals
(1) Modifications. A Bidder or Proposer may modify its Bid or Proposal in Writing prior to the Closing. Any modification must include a statement that the modification amends and supersedes the prior Bid or Proposal.
(2) Withdrawals. A Bidder or Proposer may withdraw its Bid or Proposal by Written notice submitted on the Bidder or Proposer's letterhead, signed by an authorized representative of the Bidder or Proposer, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Institution prior to the Closing. The Bidder or Proposer, or authorized representative of the Bidder or Proposer, may also withdraw its Bid or Proposal in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Institution.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0110
Formal Procurement Receipt, Opening, and Recording of Bids and Proposals
(1) In all Formal Procurements, an Institution will comply with the following:
(a) Receipt. An Institution will electronically or mechanically time-stamp or hand-mark each Bid or Proposal and any modification upon receipt. Except as provided in OAR 580-061-00075(2) the Institution will not open the Bid or Proposal or modification, but will store it in a secure place until Opening. If the Institution inadvertently opens a Bid or Proposal or a modification prior to the Opening, the Institution will reseal and store the opened Bid or Proposal or modification until the Opening. The Institution will document the resealing for the solicitation file (e.g., "Institution inadvertently opened the Bid/Proposal due to improper identification of the Bid/Proposal.").
(b2) Disclosure Opening and Recording. An Institution will publicly open Bids or Proposals including any modifications made to the Bid or Proposal. Unless otherwise specified in the Solicitation Document, the name of the Entity submitting a Bid or Proposal will be the only information that may be made public until notice of the intent to Award or an Award has been issued.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0115
Late Bids and Proposals, Late Withdrawals, and Late Modifications
Any Bid or Proposal, modification, or withdrawal received after the Closing is late. An Institution will not consider late Bids, Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120. However, Institutions may adopt an Institutional policy or procedure to accept late bids in circumstances that are determined to be in the best interests of the Institution if policy or procedure is stated in the Solicitation Document.
580-061-0120
Mistakes
(1) Generally. To protect the integrity of the Competitive Process and to assure fair treatment of Offerors, Bidders, and Proposers, 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, Bidder, or Proposer to correct or withdraw a Solicitation Response, Bid, or Proposal for an error in judgment. If the Institution discovers certain mistakes in a Solicitation Response, Bid, or Proposal after Opening, but before award of the Contract, the Institution may take the following action:

(a) An Institution, in its sole discretion, may waive or permit an Offeror, Bidder, or Proposer to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Solicitation Response, Bid, or Proposal or an insignificant mistake that can be waived or corrected without prejudice to other Offerors, Bidders, or Proposers. Examples of minor informalities include an Offeror’s Bidder’s or Proposer’s failure to:

(A) Return the correct number of Signed Solicitation Responses, Bids, or Proposals or the correct number of other documents required by the Solicitation Document; or

(B) Sign the Solicitation Response, Bid, or Proposal in the designated block, provided a Signature appears elsewhere in the Solicitation Response, Bid, or Proposal, evidencing an intent to be bound; or

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Solicitation Response, Bid, or Proposal that the Offeror, Bidder, or Proposer received the Addendum and intended to be bound by its terms, or the Addendum involved did not affect price, quality, or delivery.

(b) An Institution may correct a clerical error if the error is evident on the face of the Solicitation Response, Bid, or Proposal or other documents submitted with the Solicitation Response, Bid, or Proposal and the Offeror, Bidder, or Proposer confirms the Institution’s correction in Writing. A clerical error is an Offeror’s Bidder’s or Proposer’s error in transcribing its Solicitation Response, Bid, or Proposal. Examples include, but are not limited to, typographical mistakes, errors in extending unit prices, transposition errors, and arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices will prevail over extended prices.

(c) An Institution may permit an Offeror, Bidder, or Proposer to withdraw a Solicitation Response, Bid, or Proposal after Closing based on one or more clerical errors in the Solicitation Response, Bid, or Proposal only if the Offeror, Bidder, or Proposer 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 under subsection (b) of this subsection;

(D) That the Offeror, Bidder, or Proposer acted in good faith in submitting a Solicitation Response, Bid, or Proposal that contained the claimed error and in claiming that the alleged error in the Solicitation Response, Bid, or Proposal exists;

(E) That the Offeror, Bidder, or Proposer acted without gross negligence in submitting a Solicitation Response, Bid, or Proposal that contained a claimed error;
F) That the OfferorBidder or Proposer will suffer substantial detriment if the Institution does not grant it permission to withdraw the Solicitation ResponseBid or Proposal;

G) That the Institution's or the public's status has not changed so significantly that withdrawal of the Solicitation ResponseBid or Proposal will work a substantial hardship on the Institution or the public it represents; and

H) That the OfferorBidder or Proposer promptly gave notice of the claimed error to the Institution.

(d) The criteria in subsection (2)(a) of this rule will determine whether an Institution will permit an OfferorBidder or Proposer to withdraw its Solicitation ResponseBid or Proposal after Closing. These criteria also will apply to the question whether an Institution will permit an OfferorBidder or Proposer to withdraw its Solicitation ResponseBid or Proposal 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 Solicitation ResponseBid or Proposal 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 OfferorProposer or by resort to a new solicitation.

(3) Rejection for Mistakes. The Institution will reject any OfferorBidder or Proposer in which a mistake is evident on the face of the Solicitation ResponseBid or Proposal and the intended correct Solicitation ResponseBid or Proposal is not evident or cannot be substantiated from documents submitted with the Solicitation ResponseBid or Proposal.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0125
Low Tie Bids

(1) Definition. Low Tie Bids are low tied Responsive Bids from Responsible Bidders that are identical in price, fitness, availability, and quality and that meet all the requirements and criteria set forth in the Solicitation Document.

(2) Award. In the event of a Low Tie Bid, the Institution will award the Contract based on the following order of precedence:

(a) An Emerging Small Business that meets the definition in ORS 200.005(3) and that maintains a current certification issued by the State of Oregon Department of Consumer and Business Services;

(b) An Entity whose principal offices or headquarters are located in Oregon;

(c) If neither subsection (a) or (b) apply, award of the Contract will be made by drawing lots.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0130
Rejection of Individual Solicitation ResponsesBids or Proposals and OfferorsBidders or Proposers

(1) An Institution may reject, in whole or in part, any Solicitation ResponseBid or Proposal not in compliance with all prescribed Solicitation ResponseBid or Proposal procedures, Contract provisions, and Specifications contained in the Solicitation Document or upon a Written finding by the Institution that it is in the public interest to do so.
(2) Reasons for rejection. An Institution may reject a Solicitation Response Bid or Proposal upon the Institution's findings that include, but are not limited to, the Solicitation Response Bid or Proposal:
(a) Is contingent upon the Institution's acceptance of terms and conditions that differ from the Solicitation Document; or
(b) Takes exception to the terms and conditions (including Specifications) set forth in the Solicitation Document; 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 goods or services that fail to meet the Specifications of the Solicitation Document; or
(e) Is late; or
(f) Is not in substantial compliance with the Solicitation Document; or
(g) Is not in substantial compliance with all prescribed solicitation procedures; or
(h) Does not include the Solicitation Response Bid or Proposal security as required by the Solicitation Document; or
(i) Does not include an executed certification of non-discrimination in compliance with 580-061-0030 and compliance with Oregon tax laws.

(3) An Institution may reject an Offeror Bidder or Proposer upon the Institution's findings that include, but are not limited to, the Offeror Bidder or Proposer:
(a) Has not met any required mandatory prequalification;
(b) Has been disqualified pursuant to OAR 137-046-0210(3) (Disadvantaged Business Enterprise Disqualification);
(c) Has not met the requirements of the Emerging Small Business Program created in OAR 580-061-0035, if required in the Solicitation Document.
(d) That has been debarred in accordance with ORS 279B130 or 279C.440;
(e) Has been declared ineligible by the Commissioner of Bureau of Labor and Industries under ORS 279C.860;
(f) Has within the last five years been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;
(g) Is non-Responsible. Offerors Bidders or Proposers 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 Bidder or Proposer meets the applicable standards of Responsibility. To be a Responsible Offeror Bidder or Proposer, the Institution may consider:
(A) If the Offeror Bidder or Proposer has appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror Bidder or Proposer to meet all contractual responsibilities;
(B) If the Offeror Bidder or Proposer has a satisfactory record of contract performance. The Institution may consider both private and public contracts in determining responsible performance under a contract;
(C) If the Offeror Bidder or Proposer has a satisfactory record of integrity. An Offeror Bidder or Proposer may lack integrity if an Institution determines the Offeror Bidder or Proposer demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a state agency. An Institution may find an Offeror Bidder or Proposer non-Responsible based on the lack of integrity of any person having influence or control over the Offeror Bidder or Proposer (such as a key employee of the Offeror Bidder or Proposer that has the
authority to significantly influence the Offeror’s Bidder’s or Proposer’s performance of the Contract or a parent company, predecessor or successor person);
(D) If the Offeror Bidder or Proposer is qualified legally to Contract with the Institution;
(E) If the Offeror Bidder or Proposer has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror Bidder or Proposer fails to promptly supply information requested by the Institution concerning responsibility, the Institution may base the determination of responsibility upon any available information or may find the Offeror Bidder or Proposer non-Responsible.

(4) Form of Business Entity. For purposes of this rule, the Institution may investigate any Entity submitting a Solicitation Response Bid or Proposal. The investigation may include the Entity's officers, directors, owners, affiliates, or any other person acquiring ownership of the Entity to determine application of this rule.

(5) Notice. If an Offeror Bidder or Proposer or a Solicitation Response Bid or Proposal is rejected in accordance with this rule, the Institution will provide written notice of such rejection to the Offeror Bidder or Proposer. The notice will include the grounds for rejection and a statement of the Offeror’s Bidder’s or Proposer’s appeal rights and applicable appeal deadlines.

(a) If an Offeror Bidder or Proposer wishes to appeal the decision to reject the Offeror Bidder or Proposer or Bid or Proposal, the Offeror Bidder or Proposer must notify the Institution, in Writing, within three Days after receipt of the notification.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0135
Rejection of All Solicitation Responses Bids or Proposals

(1) Rejection. An Institution may reject all Solicitation Responses whenever the institution finds it is in the Institution’s best interest to do so. Bids or Proposals for good cause upon a Written finding that it is in the public interest to do so. Notification of rejection of all Bids or Proposals, along with the good cause justification and finding of public interest, will be sent to all who submitted a Bid or Proposal.

(2) Criteria. The Institution may reject all Bids or Proposals based upon the following criteria:

(a) The content of or an error in the Solicitation Document or the procurement process unnecessarily restricted competition for the Contract;
(b) The price is too costly or the quality, or performance presented by the Bidders or Proposers is insufficient to justify acceptance of any Bid or Proposal;
(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the Competitive Process;
(d) Causes other than legitimate market forces threaten the integrity of the Competitive Process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
(e) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08
580-061-0140
Disposition of Solicitation Responses/Bids or Proposals if Solicitation Cancelled
(1) Prior to Solicitation Response/Bid or Proposal Opening. When a solicitation is cancelled prior to Opening, all Solicitation Responses/Bids or Proposals received will be destroyed/returned to Bidders or Proposers unopened if submitted in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Bid or Proposal will be opened to determine the source and then returned to the sender.
(2) After Solicitation Response/Bid or Proposal Opening. When all Solicitation Responses/Bids or Proposals are rejected, the Solicitation Responses/Bids or Proposals received will be retained and become part of the Institution's permanent solicitation file.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0145
Protest of Contractor Selection, Contract Award, and Protest of Solicitation Document
(1) The purpose of this rule is to require adversely affected or aggrieved Offerors/Bidders or Proposers on an Institution solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the Institution's selection or Award decision.
(2) Types of Protests. The following matters may be protested:
(a) A determination of responsibility or lack thereof;
(b) A determination of responsiveness or lack thereof;
(c) The rejection of a Solicitation Response/Bid or Proposal, unless notice of rejection has been previously provided under OAR 580-061-0130(5);
(d) The content of a Solicitation Document;
(e) The selection of one or more Contractors. A protest may be submitted only by an Entity that can demonstrate that it has been or is being adversely affected by an Institution decision or the content of a Solicitation Document.
(3) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror/Bidder or Proposer must deliver a Written protest to the Institution within three (3) seven (7) Days after the Award of a Contract or issuance of the notice of intent to Award the Contract, whichever occurs first. Protests must be clearly marked on the outside of the envelope with the title or the number of the Solicitation Response/Bid or Proposal and that it is a protest to ensure that it is recognized and recorded.
(4) Content of Protest. An Offeror’s/Bidder’s or Proposer’s protest must fully specify the grounds for the protest and include all evidence that the protestor wishes the Vice Chancellor for Finance and Administration, Institution Vice President for Finance and Administration, or designee to consider. Failure to include any ground for the protest or any evidence in support of it will constitute a final, knowing, and voluntary waiver of the right to assert such ground or evidence. A protest must include a conspicuous marking identifying the type and nature of the protest.
(5) A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including, but not limited to, Specifications or Contract terms violates applicable law. The Institution will (upon altering the Solicitation Document in response to a protest) promptly transmit the revised Solicitation Document to all Offerors/Bidders and Proposers and extend the Closing where appropriate. The Institution may choose, in its sole discretion, to close the procurement process without making an Award and begin a new procurement process.
(6) A protest of the selection of one or more Contractors requires the protestor to demonstrate, as applicable;
   (a) That all higher-ranked Offerors/Bidders or Proposers were ineligible for selection or that the protestor would have been "next in line" to receive the Award and was eligible for selection; and
   (b) That the Offeror/Bidder or Proposer selected was ineligible.
   (c) In the case of a sole source procurement, that the Single Seller selected is not the only Contractor or consultant reasonably available to provide the personal or professional services, goods, services, Professional Consultant services as defined in OAR 580-061-0010, Construction-Related Services as defined in OAR 580-061-0010, or combination of Professional Consultant services and Construction-Related Services.

(7) A protest of the rejection of a Solicitation Response/Bid or Proposal must demonstrate that the Institution's decision was materially in error or that the Institution committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the rejection.

(8) Response. The Vice Chancellor for Finance and Administration or the Institution Vice President for Finance and Administration, or their designee, will have the authority to settle or resolve a Written protest. A protest received after the time set out in the Solicitation Document will not be considered. The Vice Chancellor for Finance and Administration, or Vice President for Finance and Administration, or designee will issue a Written final agency order of the protest in a timely manner. If the protest is upheld, in whole or in part, the Institution may, in its sole discretion, either Award the Contract to the successful protestor or cancel the procurement or solicitation. Contract Award may be made prior to issuance of the final agency order if authorized by the Vice Chancellor for Finance and Administration, Vice President for Finance and Administration, or their designee.

(9) Judicial Review. Judicial review of the Institution' decision relating to a Contract Award protest will be available pursuant to the provisions of ORS 183.480 et seq.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0150
Right to Inspect Plant
The Institution may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any subcontractor that is related to the performance of any prospective Contract or Awarded Contract.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0155
Invitation to Bid and Request Proposal Negotiations
(1) The Institution may negotiate with the lowest-cost Bidders after determining that that the Bids are Responsive and from Responsible Bidders.
(2) The Institution may, if it has given notice in the Solicitation Document, commence negotiations in accordance with sections (3) and (4) of this rule with Proposers in the competitive range. For purposes of this rule “competitive range” means the highest-ranked Proposers based
on evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Solicitation Document.

(3) If the Institution chooses to enter into discussions with and receive best and final Proposals, the Institution will proceed as follows:
   (a) The Institution will initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the competitive range regarding their Proposals with respect to the provisions of the Solicitation Document that the Institution identified in the Solicitation Document as the subject of discussions.
   (b) The Institution may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (3), but need not conduct the same amount of discussions with each eligible Proposer. The Institution may terminate discussions with any eligible Proposer at any time. However, the Institution will offer all eligible Proposers the same opportunity to discuss their Proposals with the Institution before the Institution notifies eligible Proposers of the date and time pursuant to subsection (d) that best and final Proposals will be due.
   (c) The Institution may adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Solicitation Document.
   (d) If best and final Proposals are required, the Institution will establish a common date and time by which Proposers must submit best and final Proposals. Best and final Proposals will be submitted only once, provided, however, the Institution may make a written determination that it is in the Institution's best interest to conduct additional discussions, negotiations, or change the Institution's requirements and require another submission of best and final Proposals. The Institution will evaluate Proposals as modified.

(4) Negotiations.
   (a) The Institution may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers.
   (b) The Institution may negotiate:
      (A) The statement of Work;
      (B) The Contract Price as it is affected by negotiating the statement of Work; and
      (C) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Solicitation Document. Accordingly, Proposers will not submit and the Institution will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Solicitation Document.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-061-0160 Disqualification from Consideration for Award of Contracts
(1) An Institution may disqualify an Entity from consideration for award of Institution Contracts for the reasons listed in subsection (2) of this section after providing the Entity with notice and a reasonable opportunity to be heard.
   (a) All OUS Institutions may rely upon a disqualification of an Entity by another Institution or exclusion by the federal government or the State of Oregon. The Chancellor's Office will maintain a current roster for Entities that have been disqualified.
(b) In lieu of the disqualification process described in this rule, an Institution contracting for a Public Improvement may petition the Construction Contractors Board to disqualify an Entity from consideration for award of the Institution's Public Improvement Contracts for the reasons listed in subsection (2) of this rule.

(2) An Entity may be disqualified from consideration for Award of a Contract for any of the following reasons:

(a) A primary employee of the Entity has been convicted of a criminal offense as an incident of obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) A primary employee of the Entity has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the person's responsibility for the Entity;

(c) A primary employee of the Entity has been convicted under state or federal antitrust statutes;

(d) A primary employee of the Entity has committed a violation of a contract provision that is regarded by an Institution or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Entity may not be considered to be a basis for disqualification;

(e) The Entity does not carry workers' compensation or unemployment insurance as required by statute.

(3) An Institution will issue a Written decision to disqualify an Entity under this section. The decision will:

(a) State the reasons for the action taken; and

(b) Inform the disqualified Entity of the appeal rights of the Entity under ORS 279C.445 and 279C.450.

(4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise furnished immediately to the disqualified Entity.

(5) Appeal of Disqualification. An Entity who wishes to appeal disqualification must, within three (3) business days after receipt of notice of disqualification, notify the Institution in Writing that the Entity appeals the disqualification. Immediately upon receipt of the notice of appeal, the Institution will notify the OUS Vice Chancellor for Finance and Administration Director of the Oregon Department of Administrative Services, or designee.

(6) The OUS Vice Chancellor for Finance and Administration, or designee, Oregon Department of Administrative Services will conduct the appeal generally consistent with the procedures set forth in accordance with ORS 279C.450. The OUS Vice Chancellor for Finance and Administration, or designee, may share the final outcome of the appeal with all Institutions.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08
DIVISION 62

PURCHASING AND CONTRACTS FOR PERSONAL OR PROFESSIONAL SERVICES AND GOODS AND SERVICES

580-062-0000
Definitions
All capitalized terms in chapter 580, division 62 have the meanings set forth in OAR 580-061-0010 unless the context requires otherwise or except as stated.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-062-0005
Procurement and Contracting Procedures
The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of personal or professional services or goods and services.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-062-0010
Procurement Card
The Chancellor's Office may maintain procurement card services for the benefit of the Institutions. The Controller's Office of the Chancellor's Office will publish policies governing use of the procurement card.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0015
Personal/Professional Services, Goods, and Services Contract Procurement Thresholds
(1) When procuring personal or professional services, goods, or services, not including services from Professional Consultants as defined in chapter 580, division 63, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated contract price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules. Institutions may establish lower procurement thresholds for specific procurements or as an Institutional policy or procedure.
(a) $25,000 or less – Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.
(b) $25,000.01 to $150,000 – Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.
(c) Greater than $100,000 – Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

(2) Notwithstanding subsection (1), if the source of the funding for the procurement requires a different procurement method, the Institution may comply with the procurement method required by the funding source.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08

580-062-0020
Methods of Procurement
Institutions will use the following methods of procurement when procuring personal or professional services or goods and services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide personal or professional services or goods and services.

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

(3) Formal Procurement. A Competitive Process where the Institution:
(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.
(b) Publishes a notice of the procurement on the OUS procurement website and, at the discretion of the Institution, beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other historically underrepresented minority, women, and emerging small business-targeted periodicals, Institution website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.
(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Entity for a Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract with any qualified Entity for services included in the scope of the Emergency. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.
(5) Retainer. Institutions may conduct a Formal Procurement to enter into Retainer Contracts with multiple Entities to provide personal or professional services or goods and services at contracted rates of compensation or based on pre-qualifications.

(6) Alternative Processes. Notwithstanding the foregoing procedures, the Institution Contract Officer may authorize alternative procurement methods that provide a Competitive Process to two or more Entities to contract with the Institution and meet the following objectives:
(a) Responds to innovative business and market methods; or
(b) Contributes to Institution productivity improvement and process redesign; or
(c) Results in comprehensive cost-effectiveness and productivity for the Institution.

(7) Exempt. Institutions need not follow, regardless of value, a Competitive Process when seeking or acquiring or paying for the following goods and services:
(a) Educational services.
(b) Advertising and media services, excluding consulting services.
(c) Price-regulated goods and services, including utilities, where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.
(d) Goods or services under federal contracts. When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, Institutions may purchase the goods and services in accordance with the federal contract. In addition, Institutions may purchase specific equipment that is only available from one source or use specific Entities that are expressly required under the terms of the contract.
(e) Copyrighted materials. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.
(f) Investment contracts and retirement plan services, excluding consulting services.
(g) Food and food-related products.
(h) Maintenance services directly from the contractor providing the goods.
(i) Used personal property.
(j) Goods purchased for resale to outside entities.
(k) Goods or services related to intercollegiate athletic programs.
(L) Cadavers or cadaveric organs.
(m) Hotel sites for large conferences and workshops.
(n) Dues, registrations, and membership fees.
(o) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, and similar commodities and products and the transportation thereof.
(p) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.
(q) Repair and overhaul of goods or equipment.
(r) Goods or services purchased in foreign countries.
(s) Insurance and insurance-related contracts, not including consulting or brokerage contracts service contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145 for purposes of source selection.
(t) Grants, including Grant applications and proposals.
(u) Contracts for legal services, including professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which an Institution is or may become interested.
(v) Contracts entered into, issued, or established in connection with:
(A) The incurring of debt by an Institution, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any associated Contracts, regardless of whether the obligations that the Contracts establish are general, special, or limited;

(B) The making of program loans and similar extensions or advances of funds, aid, or assistance by an Institution to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or

(C) The investment of funds by an Institution as authorized by law and other financial transactions of an Institution that by their character cannot practically be established under the Competitive Process.

(D) Grant-funded projects where professional or personal service providers are named in Grant or identified in the Grant budget, unless Institution determines it is in its best interest to require a Competitive Process.

(w) Contracts for employee benefit plans as authorized by law.

(x) Services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, veterinarians, and those with specific license to administer treatments for the health and well-being of people or animals.

(y) Artists, performers, photographers, graphic designers, website design, and speakers.

(z) Sponsorship agreements for Institution events or facilities.

(8) Sole Source. A process where the Institutional President, the Chancellor or designee has made a Written determination that due to special needs or qualifications, only a Single Seller is reasonably available to provide such personal or professional services or goods or services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

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

(b) An Entity may protest the Institution's determination that the personal or professional services or goods or services are available from a Single Seller in accordance with OAR 580-061-0145.

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

(9) Special Entity. (a) Institutions may purchase goods or services, without using a Competitive Process, if purchasing from a federal, state, local governmental agency, public corporation (including, but not limited to, OHSU), or a state Qualified Rehabilitation Facility certified by the Oregon Department of Human Services or the Oregon State Procurement Office.

(b) Institutions may participate in cooperative procurements with other contracting agencies or Entities or utilize other public contracts or cooperatively-procured contracts if it is determined, in Writing, that the solicitation and award process used to award that Contract was reasonably equivalent to the respective processes established in these rules, including notice during solicitation process that the contract resulting from the procurement may be utilized by other
entities. Determinations regarding equivalency and adequacy of processes for cooperating procurements will be made by Institution Contract Officer.

Institutions may enter into Contracts without using a Competitive Process when the contracting Entity is a federal, state, or local governmental agency, or a state Qualified Rehabilitation Facility certified by the Oregon Department of Human Services or the Oregon State Procurement Office. Institutions may participate in cooperative procurements with other contracting agencies if it is determined, in Writing, that the solicitation and award process for the Contract is reasonably equivalent to the respective process established in these rules and that the solicitation was advertised in Oregon.

(10) Special Procurement: A special procurement is an exemption from competitive procedures that the Finance and Administration Committee of the Board determines is appropriate because it: (A) Is reasonable expected to result in substantial cost savings to the Institution or to the public; or (b) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with other processes described in this rule.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 351
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 6-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 11-2012, f. & cert. ef. 6-18-12
Appendices

A .......Minutes, February 15, 2013
Oregon State Board of Higher Education

Finance & Administration Committee
February 15, 2013
Boardroom (ASRC 515), 1800 SW 6th Ave, Portland, Oregon

MINUTES

Committee members present included: Chair Kirk Schueler, Lynda Ciuffetti*, Allyn Ford, and Farbodd Ganjifard; Orcilia Forbes was absent due to a business conflict.

Chancellor’s Office staff present included: Vice Chancellor Jay Kenton, Doug Botkin*, Michael Green, Ellen Holland, Nathan Klinkhammer, Karen Levear, Jan Lewis, Di Saunders, Patricia Snopkowski, Marcia Stuart, Charles Triplett, Alice Wiewel, and Denise Yunker.

Others present included: Vice Presidents Mark McCambridge (OSU), Craig Morris (SOU), Monica Rimai* (PSU), Lon Whitaker (EOU), Eric Yanke (WOU), and Mary Ann Zemke (OIT); Randy Geller and Greg Strip (UO); Bill McGee (DAS).

*indicates participation by phone

1. CALL TO ORDER/ROLL CALL/WELCOME

Chair Schueler called the meeting to order at 1:01 p.m. and asked the Secretary to take roll.

2. CONSENT ITEM

   a. Approval of Minutes, January 18, 2013

      ACTION: With no comments or corrections provided the chair called for a motion to approve the January minutes as presented in the docket materials. Directors Farbodd Ganjifard and Allyn Ford made the motion and second, respectively; motion carried.

3. AGENDA ITEMS

   a. OUS, Managerial Reporting – Quarterly Management Report

      Controller Mike Green called the committee’s attention to the “dashboard” report in the docket (Appendix B, page 593), noting that this was developed to provide the data points and

5 http://www.ous.edu/sites/default/files/state_board/meeting/dockets/ddoc130215-FA.pdf
analysis upon which the committee previously viewed in the more detailed reports, including realization and burn rates, percentage changes, and changes in the annual projections. Each campus report contains pertinent notes explaining the movement within the different fund categories.

**ACTION:** With no discussion offered pertaining to the information provided, Chair Schueler called for a motion to approve the quarterly management report as of 12/31/12. Directors Farbodd Ganjifard and Allyn Ford made the motion and second, respectively; motion carried.

**b. OUS, Report on Investments – As of December 31, 2012**

Prior to presenting the report on investments, Ms. Karen Levear, director treasury operations, announced that the Internal Revenue Service completed their audit of the 2004 OUS bonds with no change in the tax status of the bonds. Controller Green added that the IRS examined the arbitrage calculations, the spend-down policies and processes, private use calculations, contracts related to private use, and conducted visual inspections of several buildings to detect obvious private use within the buildings. The System was represented by bond counsel during these inspections who also served as the contact point with the IRS agent. Ms. Levear attributed the success of the audit to the efforts of staff at the universities as well as the System office. Chair Schueler noted that the success of the audit lends credibility to the controls and processes in place in the area of bond compliance.

In December, the Oregon Investment Council (OIC) conducted its annual review of the System’s pooled endowment fund. The report was made to them by State Treasury’s Investment Division and Treasury’s investment consultant. The consultant recommended no policy changes and that the expected long-term rate of return for the target asset allocation was just over 7 percent. This level of return exceeds expected inflation and the 4 percent spend rate so the portfolio is expected to grow slightly in real terms.

Ms. Levear explained that the OUS Fund is comprised of all the cash within the System and it is managed by Internal Bank. The OUS Fund had a positive total return of .4 percent for the quarter. Under the current treasury structure, the investment earnings distributed to the campuses during the quarter was 1.37 percent, annualized (totaling just under $2.3 million); however, under the old structure, the earnings would only have been a little less than $1 million or 0.60 percent, annualized.

Of note, Ms. Levear reported that the Internal Bank Oversight Committee recently listened to a presentation by a Southern Oregon University student on the topic of socially-responsible investing—specifically about the concerns that a group of students have regarding investments in fossil fuel extraction companies. They feel that these investments are misaligned with the missions of the universities. She indicated that, in response to the oversight committee’s query as to where the System falls in the socially-responsible investing spectrum, she will be conducting a review of the System’s portfolio and offered to provide that report to the F&A
Committee when completed. She indicated that “socially-responsible investing” usually means different things to different people and a policy decision will need to be developed that identifies what values (causes or issues) will be used to determine whether or not the portfolio has been created in a socially-responsible way. Vice President Morris added that this presentation was recently given at the OUS Sustainability Conference and the students at this conference developed six goals around sustainability and that socially-responsible investing was included as one of the goals. The students have begun to gather around an initiative to move forward for the institutions to make presentations to the university foundations and others that control investable funds. He confirmed that this is an initiative that is “getting some legs” with the students. Vice Chancellor Kenton added that students nationally are urging their campuses to move from using and investing in carbon-based and fossil fuels to more responsible forms of energy. He pointed out that there may be areas in the central bank and endowment funds, and potentially with the 403(b) and Optional Retirement Plans, that could be restructured to align with socially-responsible investing.

Controller Green clarified that, ultimately, the state Treasury has the final authority to manage the OUS portfolio; however, if the System committed to aligning investments with socially-responsible investment values, we could urge the state Treasurer’s Office to carry out that commitment. In response to the chair’s question concerning recourse if the Treasurer’s Office decided against the recommendation, Mr. Green advised that as the authority was established by statute, the System would not have the option to manage its own portfolio and would have to abide by the decisions of the Oregon Investment Council.

ACTION: With no further discussion offered, Chair Schueler called for a motion to approve the second quarter investment report as of 12/31/12. Directors Lynda Ciuffetti and Allyn Ford made the motion and second, respectively; motion carried.

c. OUS, Risk Management Quarterly Update

Chair Schueler called upon Ms. Ellen Holland, Chief Risk Officer, OUS Risk Management, to present the update. Ms. Holland began her presentation by thanking the campus vice presidents for finance and administration, Vice Chancellor Kenton, Chancellor’s Office staff, and the actuary (Kevin Wick from Price Waterhouse Cooper). Referring to the docket, she described the Risk Management Program Policy as having three key components and is the strategic umbrella portion of the risk program. The three key components consist of 1) the establishment of a Risk Oversight Committee (ROC)—headed by the Vice Chancellor of Finance and Administration, who is the de-facto non-voting member, and includes representatives for the vice presidents of finance and administration—and is the “deciding arm” of the policy; 2) formalizes and embeds the Risk Council into the program; and 3) the System Office of Risk Management to manage the program (including purchasing insurance, bind coverage, investigating claims when needed, and making claim settlements with the authorization of the ROC). The policy is designed to be broad and general in order to provide flexibility in the ever changing environment.
ACTION: Chair Schueler called for a motion to approve the Risk Management Program Policy. Directors Farbod Ganjifard and Allyn Ford made the motion and second, respectively; motion carried.

The Risk Fund Policy discusses the need to protect the funds associated with the policy in order to have a sustainable program over time. The three subfunds protected under this policy include the casualty fund (e.g., general liability, employment claims), the property fund (specific to real property), and the workers’ compensation fund. Flexibility has been included in order to provide the opportunity to add other funds in the future.

It was explained that these policies and funds have been created as a result of the movement away from the Department of Administrative Services, as authorized under Senate Bill 242. In the past, DAS maintained reserves to cover risk management for all state agencies and these monies were transferred to OUS ($10.1 million). Discussion was held concerning the outstanding claims as determined by DAS prior to the transfer to OUS and how it is anticipated that the total cost of these claims will be reduced through management provided by the ROC and the System/campus legal counsel.

ACTION: Chair Schueler called for a motion to approve the Risk Fund Policy. Directors Allyn Ford and Farbod Ganjifard made the motion and second, respectively; motion carried.

The Risk Allocation Model for the 2013-14 assessment was then explained. The model is based on the key assumptions that the model is: 1) fair and transparent, 2) utilizing proportionality for the campuses (noting the variances in size and make-up of the campuses), using exposure units as a portion of the allocation model, and 3) using the experience of the campus. The model was built around four budgeted areas: workers’ compensation, general liability, auto liability and property damage, and property. The amounts budgeted for the 2013-14 insurance funds were based on the final premium costs of 2012-13. For the expected claims cost, each campus cost represented is driven from their actuarially rated experience model, as reported by Price Waterhouse Cooper (based on a 5-year historical picture and a forward projection based on experience). The operations cost allocation of the model took into consideration the level of expertise available on each campus; however, to cover Chancellor’s office staff time, the following percentages were charged: 20 percent for workers’ compensation, 30 percent for property, and 50 percent for casualty and all other areas.

Dr. Kenton indicated that the data provided in each exhibit have been projected for 2013-14 and will be given to the campuses in order to be built into their 2013-14 budgets, and have the potential of affecting rates for housing, tuition, or other items. This information will be provided to the Committee for approval on an annual basis, most likely in the first quarter of the calendar-year. It is hoped that incentives will be awarded to the campuses, on the basis of performance, in the form of additional funding for loss control and will be decided by the Risk Council and the ROC.
During the discussion, Vice President Monica Rimai, PSU, expressed her support of the policies and the 2013-14 assessments, even though PSU’s contribution is increasing considerably. Property costs are high, due to the age of the university’s facilities, and she offered that, unless that reality is linked to funding for deferred maintenance and supporting the differences in the System campuses that drive up other costs, an impossible, vicious cycle is perpetuated at Portland State. “The more that we have to pay into insurance the less we’re going to have to maintain our facilities…and no amount of change in culture is going to change that reality.” Chair Schueler answered that “there’s no doubt that when you change some economics, you usually change some behaviors.” Ms. Holland acknowledged Ms. Rimai’s comments pertaining to property insurance and how it has raised awareness of the need for concerted deferred maintenance. Various assumptions were also reviewed in order to make it very fair for all of the campuses and then smoothed out any spikes that could be hid if a large loss was experienced by using a 5-year retrospective review on their losses rather than having to pay for a cost as it occurs.

**ACTION:** Chair Schueler called for a motion to approve the 2013-14 Risk Allocation Assessments. Directors Farbod Ganjifard and Allyn Ford made the motion and second, respectively; motion carried.

Dr. Kenton asked whether or not the Committee desires to approve the annual allocations for delegate the approval authority to the ROC (similar to how the Internal Bank is operated); Chair Schueler opined that the Committee would appreciate an annual update but that the actual approval of assessments could be delegated.

Ms. Holland then provided an update on OUS claims (see exhibits 4A and 4B). She noted that the way in which money will be saved in the program is by tightening up the claims control areas; minimizing losses in frequency to begin with, and then tightening costs overtime.

**ACTION:** Chair Schueler called for a motion to accept the general risk management update. Directors Allyn Ford and Farbod Ganjifard made the motion and second, respectively; motion carried.

d. **Oregon Tech, Approval of Restrictive Covenant for 1.75 MW Geothermal Power Plant Project**

Vice President Mary Ann Zemke, Oregon Tech, was called upon to provide background on this request.

**ACTION:** Chair Schueler called for a motion to permit Oregon Tech to obtain the necessary permits to construct the building and infrastructure for the 1.75 MW Geothermal Power Plant Project and to specifically authorize Oregon Tech to execute and enter into the Restrictive Covenant. Further, that the Committee specifically authorized Mary Ann Zemke, Vice President for Finance & Administration at Oregon Tech, to execute all the foregoing related documents.
4. **REPORT ITEMS**

   a. **OUS, Senate Bill 242 One Year Later – Legal Services Update**

      This item was postponed.

   b. **OUS, Capital Projects Financial Analysis**

      i. Comparison of OUS capital construction costs by component to typical commercial projects

      ii. Comparison of OUS capital construction costs by type of project to other universities

      Chair Schueler called upon Alice Wiewel, director of capital planning and construction, to present the capital projects financial analysis. She advised that, at the short legislative session in February 2013, questions were raised concerning the System capital project costs. In preparing for the session, two studies provided analyses. One study benchmarked costs across peer institutions for four building types and segregating the regional institutions from the large institutions. In comparison to the peers, 190 different individual projects were identified (with costs normalized and regionally adjusted) and revealed that System institutions tend to incur lower costs. This analysis was conducted by Sightlines, and cover projects during the period of Fiscal Year 2005 through 2012.

      The second study, conducted in partnership with Fortis Construction and Skanska USA, looked at components of projects, comparing commercial projects to university projects (e.g., lifespan gained through component and material selections). This study also confirmed that System universities are appropriately utilizing state funds in the stewardship of the facilities.

   c. **2013-2015 Budget Update**

      Ms. Jan Lewis, assistant vice chancellor for budget operations, provided an update on the 2013-2015 biennial operating and capital budgets. She advised that the Legislative Fiscal Office routinely requests agencies to model reduction scenarios. The specific request this year was to model reductions to the Current Service Level of 5, 10, and 15 percent; although these percentages are based on the total General Fund allocation, when allocated to the appropriations, these reductions are cannot be allocated to debt service as the System is legally obligated to pay debt service. In response to Director Ganjifard’s query concerning a reduction considered during the last legislative session and the potential for a reduction in the upcoming session, Pernsteiner advised that the economic forecast released that day substantiated the governor’s proposal and that there isn’t an imminent budget reduction due to the forecast.

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4 See table 1, page 36, of the docket,
However, the Governor’s Balanced Budget proposed a variety of changes to PERS and sentencing that, if not adopted, will create additional claims on the General Fund that could potentially trigger reductions later in the session.

Additionally, Ms. Lewis advised that Governor Kitzhaber announced his priority list for $242 million in capital construction projects and that the priority list for the System followed the recommendations put forward by the F&A Committee in January.

d. 2013-2015 Outcome-based Budget Update

Ms. Lewis advised that the newly formed workgroup with representatives from the seven universities held an organizational meeting with Dennis Jones, the consultant from the National Center for Higher Education Management Systems (NCHEMS), to determine the types of criteria to be included in the development of the model. At the next meeting, Mr. Jones will present an initial model with which the workgroup may use to create scenarios. The model will be based on factors that contain elements such as achievement compacts, research, economic development, and outreach, etc.

Vice Chancellor Kenton advised that the workgroup is currently comprised of three provosts, three vice presidents for finance and administration, and one vice provost for student affairs. A student from Western Oregon University is participating and the Oregon student Association has been approached to assist in identifying additional students who might also participate.

Significant amounts of money could be allocated through the outcome-based budget as the GBB proposed 30 percent of the university support fund be allocated through this vehicle. The university support fund is approximately $480 million; therefore, 30 percent translates into approximately $145 per biennia and $72.5 million per year. Discussions of stop-loss will be conducted in order to prevent disruption of the funding streams and to allow time for agencies to adapt. Chief Education Officer, Dr. Rudy Crew, has indicated that this process most likely will not be in use until the 2014-15 allocation.

5. ADJOURNMENT

With no further business proposed, Chair Schueler adjourned the meeting at 2:58 p.m.