OUS, Approval of Permanent Adoption Of Amendments to 580-042-0010 (Gift, Grant, and Contract Management); 580-060-0000 through 0060 (Real Property, Facility, and Campus Planning); 580-061-0000 through 0160 (Procurement and Contracting Code); 580-062-0000 through 0020 (Purchasing and Contracts for Personal or Professional Services and Goods and Services); and 580-063-0000 through 0045 (Capital Construction and Contracting); Permanent Repeal of OAR 580-040-0100 through 0295; 580-050-0001 through 0105; OSU OAR 576-008-0200 through 295; UO OAR 571-040-0010 through 0460

Summary:
After extensive discussion and review by staff, campus representatives, and the Oregon Department of Justice (DOJ) at the February 2008 meeting, the Board passed temporary rules significantly updating the OUS rule scheme for procurement, including new sections for contracting, the procurement of goods and professional services, and capital construction. The drafting, revision, and reconstruction of these rules had been underway for over five years and were the result of significant discussion and collaboration on the part of the Chancellor’s Office, OUS campuses, and DOJ. On April 15, 2009, the Chancellor’s Office conducted a public hearing on the rule changes. No oral or written comments were received at the public hearing.

After the temporary rules were passed and became effective, the Chancellor’s Office and DOJ noticed several elements that required correction before the rules were to become permanent. Several of these corrections were adopted under revised temporary rules during the June 2008 meeting. The remaining corrections are reflected in the below version. All changes to the rules are being made to clarify the applicability of particular provisions of the rules wholly consistent with the original intent of the rule scheme as passed in February 2008.

Staff Recommendation to the Board:
Staff recommends that the Board permanently adopt the new version of the referenced rules as included in the docket and permanently suspend the previous version of the referenced temporary rules and referenced Division 40 and 50 rules, and referenced UO and OSU rules.

(Board action required.)
580-060-0000
Authority
These rules establish the procedures that will be followed by 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 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

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

580-060-0010
Comprehensive Plan Coordination
Each of the Institutions will maintain a long-range campus development plan covering approved campus boundaries, including real property that is not contiguous to the main campus. The combined 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 will be approved by the 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

580-060-0015
Records
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 the control of the Board. Documents affecting real property 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:
580-060-0020
Purchase of Real Property
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 will be for the present or future development of the Institution.

(1) The Institution President has 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) Obtain prior approval of the acquisition by the Chancellor or designee, and
(c) Complete an environmental assessment and confirm that any risk associated with the real property is reasonable under the circumstances, and
(d) Obtain Legislative limitation, if required.

(3) All purchases of real property will comply with the applicable requirements of ORS Chapter 270.

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

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.

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

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:
580-060-0035
Sale of Real Property
(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. ef. 2-19-08 thru 8-16-08

580-060-0040
Easements
(1) All instruments granting or acquiring an easement must be executed by the Board President and Board Secretary.

(2) 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. ef. 2-19-08 thru 8-16-08

580-060-0045
Use of Facilities for Other than Institutional Purposes
Institutions normally will not make available Institutional buildings and other facilities to individuals for essentially private use or to outside organizations, unless approved in Institutional policy or required by law. Exceptions will be made only if the proposed use is consistent with Institutional policies and missions and the individual or organization fully reimburses the Institution 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. ef. 2-19-08 thru 8-16-08

580-060-0050
Transfers of Interests in Real Property
(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 Chancellor 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. ef. 2-19-08 thru 8-16-08

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

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 or certified 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 351ORS 182.415, 182.425 & 351.070
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

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 distributed to all interested 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 Solicitation Document ITB.

(4) "Bidder" means an Entity that submits a Bid in response to an Solicitation Document 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 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 Bid 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, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the 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) "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 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 sealed Bids or Proposals.

(26) "Owner" means the State of Oregon acting by and through the Board, in its own right or on behalf of one if its Institutions as identified in the Solicitation Document, also known as the Oregon University System (OUS).
(27) "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.

(28) "Personal or Professional Services Contract" 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 Contract" under this definition does not include an architect, engineer, planners, land surveyors, appraisers, construction managers, and similar professional consultants for construction work.

(29) "Price Agreement" means a binding 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.

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

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

(32) "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.

(33) "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.

(34) "Public Work" is defined by the Bureau of Labor and Industries (BOLI) in ORS 279C.800(6). as defined by the Bureau of Labor and Industries (BOLI) includes, but is not limited to, roads, highways, buildings, structures, and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by an Institution or the Board to serve the public interest but does not include the reconstruction or renovation of privately owned property that is leased by the Board or an Institution.

(35) "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.

(36) "Request for Information (RFI)" means a Solicitation Document seeking information regarding products or services that an Institution is interested in procuring.
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.

"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.

"Responsible Bidder or Proposer" 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.

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

"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.

"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.

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

"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.

"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.

"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.

"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.

"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. "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 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 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 will be voidable at the sole discretion of the Institution. Institutions may take appropriate action in response to execution of Contracts 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.
(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 Minority Business Enterprises, Women Business Enterprises, and Emerging Small 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 Minority, Women, and Emerging Small 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 Proposers will certify, as part of the Bids or Proposals that such Bidder or Proposer has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

(4) On an annual basis, Institutional 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:
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 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

580-061-0040
Sexual Harassment Policy
All Contractors 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.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 293.462
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0055
Invitation to Bid Required Provision

(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 recyclable 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

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
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

580-061-0070
Bids or Proposals are Offers
(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract 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 Bid or Proposal will be a complete offer and fully responsive to the Solicitation Document, unless Bidders 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, Bidders or Proposers will not make their Bids or Proposals 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 Bids and Proposals
(1) Institutions may authorize submission of Bids or Proposals through facsimile or electronic methods if:
   (a) The Solicitation Document permits submission via facsimile or electronic means; and
   (b) The Institution establishes methods of receiving, identifying, recording, and preserving the "sealed" requirement of the Competitive Process.
(c) Bids or Proposals submitted through facsimile and electronic methods must contain Written signatures indicating intent to be bound by the offer.

(2) Institutions may execute or open electronic submissions to verify receipt of documents prior to the Closing, but will not verify responsiveness.

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

580-061-0080
Bid or Proposal Submissions
(1) Identification of Bids or Proposals. To ensure proper identification and special handling, 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 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.

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-Bid and Pre-Proposal Conferences
(1) Pre-Bid or pre-Proposal conferences may be scheduled. Each pre-Bid or pre-Proposal conference will be described in the Solicitation Document as "voluntary" or "mandatory." If such a conference is designated as "mandatory," a Bidder or Proposer must attend in order to submit a Bid or Proposal.

(2) If the Bidder or Proposer is an individual, the Bidder or Proposer may authorize a representative other than himself/herself to attend the pre-Bid or pre-Proposal conference.

(3) Statements made by Institutional representatives at the pre-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

580-061-0090
Bid or Proposal 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 Bid or Proposal security of all unsuccessful 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 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

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 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 Bidders or Proposers to receive Addenda.
(2) The Institution will issue the Written Addenda within a reasonable time prior to Closing to allow prospective Bidders or Proposers to consider the Addenda in preparing their Bids or Proposals. The Institution may extend the Closing if it determines prospective 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

580-061-0100
Clarification of Solicitation Document and Requests for Change
Unless a different deadline is specified in the Solicitation Document, requests for clarification or change of the Solicitation Document must be received by the Institution in writing 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 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

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

580-061-0110
Receipt, Opening, and Recording of Bids and Proposals

(1) 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.").

(2) 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

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.

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

580-061-0120
Mistakes

(1) Generally. To protect the integrity of the Competitive Process and to assure fair treatment of 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 a Bidder or Proposer to correct or withdraw a Bid or Proposal for an error in judgment. If the Institution discovers certain mistakes in a 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 a 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 Bid or Proposal or an insignificant mistake that can be waived or corrected without prejudice
to other Bidders or Proposers. Examples of minor informalities include a Bidder’s or Proposer’s failure to:

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

(B) Sign the Bid or Proposal in the designated block, provided a Signature appears elsewhere in the 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 Bid or Proposal that the 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 Bid or Proposal or other documents submitted with the Bid or Proposal and the Bidder’s or Proposer confirms the Institution’s correction in Writing. A clerical error is a Bidder’s or Proposer’s error in transcribing its 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 a Bidder or Proposer to withdraw a Bid or Proposal after Closing based on one or more clerical errors in the Bid or Proposal only if the 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 Bidder or Proposer acted in good faith in submitting a Bid or Proposal that contained the claimed error and in claiming that the alleged error in the Bid or Proposal exists;

(E) That the Bidder or Proposer acted without gross negligence in submitting a Bid or Proposal that contained a claimed error;

(F) That the Bidder or Proposer will suffer substantial detriment if the Institution does not grant it permission to withdraw the Bid or Proposal;

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

(H) That the Bidder 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 a Bidder or Proposer to withdraw its Bid or Proposal after Closing. These criteria also will apply to the question whether an Institution will permit a Bidder or Proposer to withdraw its Bid 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 Bidder's or Proposer's Bid 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 Proposer or by resort to a new solicitation.

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

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 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 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

580-061-0130
Rejection of Individual Bids or Proposals and Bidders or Proposers
(1) An Institution may reject, in whole or in part, any Bid or Proposal not in compliance with all prescribed Bid or Proposal procedures, Contract provisions, and Specifications contained in the Solicitation Document or if 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 Bid or Proposal upon the Institution's findings that include, but are not limited to, the 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 Bid or Proposal security as required by the Solicitation Document; or
(i) Does not include an executed certification of non-discrimination in compliance with 580-061-00305 and compliance with Oregon tax laws.

(3) An Institution may reject a Bidder or Proposer upon the Institution's findings that include, but are not limited to, the 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) Being submitted by an Entity 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. 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 Bidder or Proposer meets the applicable standards of Responsibility. To be a Responsible Bidder or Proposer, the Institution may consider:
   (A) If the 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 Bidder or Proposer to meet all contractual responsibilities;
   (B) If the 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 Bidder or Proposer has a satisfactory record of integrity. A Bidder or Proposer may lack integrity if an Institution determines the 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 a Bidder or Proposer non-Responsible based on the lack of integrity of any person having influence or control over the Bidder or Proposer (such as a key employee of the Bidder or Proposer that has the authority to significantly influence the Bidder's or Proposer's performance of the Contract or a parent company, predecessor or successor person);
(D) If the Bidder or Proposer is qualified legally to Contract with the Institution;

(E) If the Bidder or Proposer has supplied all necessary information in connection with the inquiry concerning Responsibility. If the 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 Bidder or Proposer non-Responsible.

(4) Form of Business Entity. For purposes of this rule, the Institution may investigate any Entity submitting a 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 a Bidder or Proposer or a Bid or Proposal is rejected in accordance with this rule, the Institution will provide written notice of such rejection to the Bidder or Proposer. The notice will include the grounds for rejection and a statement of the Bidder's or Proposer's appeal rights and applicable appeal deadlines.

(a) If a Bidder or Proposer wishes to appeal the decision to reject the Bidder or Proposer or Bid or Proposal, the 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

580-061-0135
Rejection of All Bids or Proposals

(1) Rejection. An Institution may reject all 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 are too costly or of is insufficient quality 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
580-061-0140
Disposition of Bids or Proposals if Solicitation Cancelled

(1) Prior to Bid or Proposal Opening. When a solicitation is cancelled prior to Opening, all Bids or Proposals received will be 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 Bid or Proposal Opening. When all Bids or Proposals are rejected, the 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

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 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 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, a Bidder or Proposer must deliver a Written protest to the Institution within 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 Bid or Proposal and that it is a protest to ensure that it is recognized and recorded.

(4) Content of Protest. A 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 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 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 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 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'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.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08
The Institution may negotiate in accordance with sections (4) and (5) of this rule with the highest-ranked Bidders or Proposers after determining that all Responsible Responsive Bids or Proposals exceed the Institution’s cost estimate. The Institution may negotiate with the lowest-cost Bidders after determining that the Bids are Responsive and from Responsible Bidders.

The Institution may also commence negotiations with Proposers in the competitive range based on evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Solicitation Document. After evaluation of all Proposals in accordance with the criteria set forth in the Solicitation Document, the Institution will determine Proposers in the competitive range. The Institution may, if it has given notice in the Solicitation Document, commence negotiations 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.

The Institution will provide Written notice to all Proposers identifying Proposers in the competitive range. 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 Documents.
Document that the Institution identified in the Solicitation Document as the subject of discussions. The Institution may conduct discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;
(B) Notifying eligible Proposers of parts of their Proposals for which the Institution would like additional information; or
(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Institution to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Solicitation Document.

(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.

(A) Continue discussions with a particular eligible Proposer;
(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
(C) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section (6) of this rule to the eligible Proposers requesting best and final Proposals.

(4) Negotiations.

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

(5) At any time during discussions or negotiations that the Institution conducts in accordance with this rule, the Institution may terminate discussions or negotiations with the highest-ranked Bidder or Proposer or the Bidder or Proposer with whom it is currently discussing or negotiating, if the Institution reasonably believes that:
(a) The Bidder or Proposer is not discussing or negotiating in good faith; or
(b) Further discussions or negotiations with the Bidder or Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
(c) If the Institution is conducting serial negotiations and the Institution terminates negotiations with a Proposer in accordance with section (3)(b)(B) of this rule, the Institution may then commence negotiations with the next highest-scoring Proposer in the competitive range and continue the process described in section (3) of this rule until the Institution has either:
(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
(B) Completed one round of discussions or negotiations with all Proposers in the competitive range, unless the Institution provided for more than one round of discussions or negotiations in the Solicitation Document.
(d) If the Institution chooses to conduct competitive negotiations, the Institution may negotiate simultaneously with competing Proposers. The Institution:
(A) Will treat all Proposers fairly and will not favor any Proposer over another;
(B) May disclose other Proposer’s Proposals or the substance of negotiations with other Proposers only if the Institution notifies all of the Proposers with whom the Institution will engage in negotiations of the Institution’s intent to disclose before engaging in negotiations with any Proposer.
(e) Any oral modification of a Proposal resulting from negotiations under sections (4) and (5) will be reduced to Writing by the Proposer.

(6) 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.

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
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. 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.

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.

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.

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

Appeal of Disqualification. An Entity who wishes to appeal disqualification will, 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 Director of the Oregon Department of Administrative Services, or designee.
(6) The Oregon Department of Administrative Services will conduct the appeal in accordance with ORS 279C.450.
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 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

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.

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

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

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

(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 Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

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

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

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, 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) Brand-name goods and services or product prequalification. 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 or services. 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.
(eb) Advertising and media services, excluding consulting services.
(dc) 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.
(ed) 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.
(fe) 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.
(gf) Investment contracts and retirement plan services, excluding consulting services.
(hg) Food and food-related products.
(ih) Maintenance services directly from the contractor providing the goods.
(ji) Used personal property.
(kj) Goods purchased for resale to outside entities.
(L-k) Goods or services related to intercollegiate athletic programs.
(ml) Cadavers or cadaveric organs.
(nm) Hotel sites for large conferences and workshops.
(on) Dues, registrations, and membership fees.
(po) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, and similar commodities and products and the transportation thereof.
(qp) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.
(rq) Repair and overhaul of goods or equipment.
(sr) Goods or services purchased in foreign countries.
(ts) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145 for purposes of source selection.
(ut) Grants, including Grant applications and proposals.
(vu) Contracts for 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.
(wv) 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.
(xw) Contracts for employee benefit plans as authorized by law.
(yx) 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.
(zy) Artists, performers, photographers, graphic designers, website design, and speakers.
(aaz) 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
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. 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 substantially reasonably equivalent to the respective process established in these rules and that the solicitation was advertised in Oregon.

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

DIVISION 63
CAPITAL CONSTRUCTION AND CONTRACTING

580-063-0000
Authority
These rules establish the procedures that will be followed by the Institutions of the Oregon University System (OUS) to erect, improve, repair, maintain, equip, and furnish buildings and structures under the control of the Board.
Stat. Auth.: ORS 351.060
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0005
Authorization to Undertake Capital Construction Projects
Capital construction is defined as any construction or facility improvement that costs $500,000 or more and is not considered maintenance or repair. Before an Institution contracts for Capital Construction on land owned or controlled by the Board, or prepares other than conceptual plans or preconstruction design, the Institution will obtain approval as set out in this rule, regardless of the source of funds or method by which the project is to be financed. To obtain approval, the Institution will describe the
project, the financing plan for design and construction, and the operation and maintenance cost of the proposed project.

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

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

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

580-063-0010
Definitions
All capitalized terms in chapter 580, division 63, have the meanings set forth in OAR 580-061-0010 unless set forth below, or unless the context requires otherwise or except as stated.

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

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

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

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

580-063-0015
Procurement and Contracting Procedures
The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of Construction-Related Services and Professional Consultants.

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

580-063-0020
Methods of Procurement
Institutions will use the following methods of procurement when procuring Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

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

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

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

OUS Retainer Contract Program
(a) The OUS Capital Construction and Planning Office will maintain Retainer Contracts for Professional Consultants, Construction-Related Services, and any other service that may from time to time benefit Institutions. The Retainer Contracts will be established in accordance with this subsection.
(A) Periodically, but no less often than every two years, the OUS Capital Construction and Planning Office will invite interested Contractors to submit business information that meets minimum qualifications as described in a Solicitation Document. Contractors that meet the minimum qualifications and have not been disbarred or disqualified by an agency of the State of Oregon as outlined in OAR 580-061-0160, may be offered a Retainer Contract to be listed on the respective retainer program to provide services in a non-exclusive and on an as-needed basis.
(B) Notice of the procurement will be published on the OUS procurement website and, if beneficial to the procurement, in a trade periodical,
newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertisement.

(A) Follow the procurement processes established in these rules.
(B) Use the contract templates associated with each retainer program.
(C) Any service procured will be the sole financial responsibility of the public agency.
(D) The public agency will be solely liable to resolve all disputes that may arise from breach of contract.
(E) The OUS Capital Construction, Planning, and Budget Office may impose a reasonable administrative fee on the public agency using the Retainer Contracts based on the compensation for services procured to recover administrative costs, legal review fees, and to improve or expand retainer programs.

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

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

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

(a) Authority. Institutions may authorize sole source procurements up to $1,000,000 cumulative for all Institution projects throughout a fiscal year. The Chancellor or designee may authorize sole source procurements up to $5,000,000 cumulative for each Institution’s projects throughout a fiscal year. The Board will approve all other sole source procurements.

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

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

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

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

580-063-0025
Contracts for Professional Consultants
Institutions will use one of the following two procedures when contracting for Professional Consultant services:

(1) OUS Capital Construction Retainer Program for Professional Consultants.
   (a) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is $100,000 or less, the Institution may select a Professional Consultant that has entered into a Retainer Contract.
   (b) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is $100,000.01 to $250,000, the Institution must select at least three Professional Consultants who have entered into Retainer Contracts to provide proposals for the service. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document. In the event that fewer than three Professional Consultants are on the retainer that can provide the required service, the Institution may proceed with fewer than three Bids or Proposals.
   (c) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is $250,000.01 to $1,000,000, the Institution will post an advertisement of the opportunity on the OUS procurement website. All eligible Professional Consultants that have entered into Retainer Contracts will have an opportunity to submit a proposal in response to the opportunity. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document.
(2) Standard Procurement. Except in cases of Emergency, Special Procurement, or when only a Single Seller is reasonably available, when procuring Professional Consultant services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

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

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

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

580-063-0030
Contracts for Construction-Related Services
Institutions will use one of the following policies and procedures when procuring Construction-Related Services for a Contract or Public Improvement Contract:

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

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

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

(c) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is $500,000.01 to $1,000,000, the Institution will post an advertisement of the opportunity on the OUS procurement website. All eligible Contractors that have entered into Retainer Contracts will have an opportunity to submit a Bid
or Proposal in response to the opportunity. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the opportunity Solicitation Document.

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

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

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

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

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

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

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

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

580-063-0035
**Oregon’s Percent for Art**
The "Percent for Art" legislation governed by ORS 276.073 through 276.090, guides the acquisition of Oregon's state art collection. For acquisition of art work in applicable state buildings, this program sets aside no less than 1 percent of the construction funds of buildings with a construction budget of $100,000 or more. The Institution will be responsible to ensure compliance with the "Percent for Art" for applicable projects.

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

580-063-0040
Design Standards
All major facility projects will be planned, designed, constructed, and renovated to meet high performance building standards for energy efficiency and environmental sustainability as defined by the Department of Energy and the State of Oregon.

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

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

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

580-063-0045
Retainage Processing Charges

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

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

(3) For Construction-Related Services Contracts over $1,000,000 the Contractor may request that the retainage be deposited in an interest-bearing account at a financial institution. Title to such funds will remain with the Board until the Work is complete and accepted by the Institution. Interest on deposited retainage accrues to the benefit of the Contractor and will remain in the retainage account until the Work is accepted. The Institution may deduct fees necessary to open and maintain an interest-bearing account.
(4) Alternatives to cash retainage. In lieu of cash retainage to be held by the Institution or financial institution, the Contractor may substitute one of the following:
(a) Deposit of securities:
   (A) The Contractor may deposit bonds or securities with the Institution or in any bank or trust company to be held for the benefit of the Institution. In such event, the Institution will reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.
   (B) Bonds and securities deposited or acquired in lieu of retainage will be of a character approved by the Controller's Office, including but not limited to:
      (i) Bills, certificates, notes, or bonds of the United States.
      (ii) Other obligations of the United States or its agencies.
      (iii) Obligations of any corporation wholly owned by the federal government.
   (C) Upon the Institution determination that all requirements for the protection of the Institution's interests have been fulfilled, it will release to the Contractor all bonds and securities deposited in lieu of retainage.
(b) Deposit of surety bond. An Institution, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Institution in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond will accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage will be reduced by an amount equal to the value of the bond and the excess will be reimbursed to the Contractor.
(5) An Institution will recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final Contract payment.

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

(1) Institutions are authorized to apply for and accept, on behalf of the Board, gifts or grants and to negotiate contracts that will not result in:
(a) Enrollments in excess of those on which budgets have been based;
(b) Commitment of funds beyond those available in budgets approved by the Board, or the normal continuation thereof;
(c) Creating a commitment for the institution or the state to continue support of a program funded through gifts, grants or contracts, in the event such funds are discontinued;
(d) Development or support of activities inconsistent with the approved mission of the department and/or institution;
(e) Launching of new curricular programs that have not received prior Board approval;
(f) Establishing or significantly expanding a clientele for services of an essentially nonresearch or noninstructional nature.

(2) The Vice Chancellor for Finance and Administration or a designee is authorized to approve applications for and acceptance of other gifts, grants or contracts.

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