MINUTES OF THE REGULAR MEETING OF THE
STATE BOARD OF HIGHER EDUCATION
PORTLAND STATE UNIVERSITY, PORTLAND, OREGON
JULY 11, 2008

1. Call to Order/Roll Call/Welcome

2. Reports
   a. Chancellor’s Report
   b. Provosts’ Council
   c. Research Council
   d. Interinstitutional Faculty Senate (IFS) President
   e. Oregon Student Association (OSA) Chair

3. Consent Items
   a. OSU, Undergraduate Certificate in Religion and Culture
   b. PSU, Ph.D. in Mechanical Engineering
   c. PSU, Graduate Certificate in Public Management
   d. WOU, M.S. in Management and Information Systems

4. Action Items
   a. Presidential Compensation
   b. Board Elections
   c. Approval of Permanent Adoption Of Amendments to 580-060-0000 through 0060 (Real Property, Facility, and Campus Planning); 580-061-000 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)
   d. Best Practices
   e. OUS, Continuing the Investment in Oregonians for our Future (2009-2011 Biennial Operating Budget Presentation)
   f. OUS, Capital Construction Budget Request, 2009-2015

5. Discussion Items
   a. Board Focus Group on Governance (Kelly)
   b. Board Focus Group on Regional Universities (Blair)

6. Committee Reports
   a. Standing Committee Reports
   b. Other Board Committees

7. Public Input

8. Board Comments

9. Delegation of Authority to Board’s Executive Committee

10. Adjournment
AGENDA

1. CALL TO ORDER/ROLL CALL/WELCOME

President Dyess called the meeting to order at 8:12 a.m. Board members present included: President Kirby Dyess, Don Blair, Hannah Fisher, Brian Fox, Jim Francesconi (8:50), Paul Kelly, Dalton Miller-Jones, Rosemary Powers, Preston Pulliams, and Tony Van Vliet. John von Schlegell was absent due to a business conflict.

Others present included: Presidents Mary Cullinan (SOU), Dave Frohnmayer (UO), Dixie Lund (EOU), John Minahan (WOU), Ed Ray (OSU), Michael Reardon (PSU), and Dave Woodall (OIT). Provost Lesley Hallick (OHSU) was also present.

Chancellor’s Staff present included: Chancellor George Pernsteiner, Ryan Hagemann, Jay Kenton, Bob Simonton, Marcia Stuart, and Susan Weeks.

President Dyess extended congratulations to staff of the Chancellor’s Office GEAR-UP Program that is endeavoring to assist students from the rural parts of the state to prepare to enter OUS institutions. Stephanie Carnahan, Anne Stevens, and Natalie Toogood were commended for the outstanding work they have done with the program.

Dr. James Bean was welcomed as the Interim Senior Vice President and Provost at the University of Oregon, following the departure of Dr. Linda Brady.

As of August 4, 2008, Dr. James Klein will assume the responsibilities as Vice President for Academic Affairs and Provost at Southern Oregon University. Dr. Klein will come to Oregon from Texas A&M University of Commerce where he is the Dean of the College of Arts and Sciences. “I also want to note my appreciation to Dr. Ed Battistella for his service to SOU as the interim Provost,” Ms. Dyess added.

It was announced that as of August 1st, Dr. Kent Neely would be joining the Western Oregon University team as Provost and Vice President for Academic Affairs. Dr. Neely came to WOU from Southern Illinois University in Edwardsville where he is currently Dean of the College of Arts and Sciences. Thanks were extended to Dr. Hilda Rosselli for her service to Western and OUS and, in particular, for her service to the Joint Board’s UEE Committee.
2. **Reports**

   a. **Chancellor’s Report**

   Chancellor Pernsteiner pointed out that the Board agenda included, for Board approval, a recommended slate of investments that: continue the path that the Board set two years ago to rebuild the capacity of the System to successfully serve students; make new investments to reach out to students who historically have not been well served; and, improve graduate education, research, and the investment in engineering technology. In addition, there is a capital budget that is greatly needed by the System.

   Dr. Michael Reardon was recognized for his service as Interim President of PSU. “He came out of retirement for the third time, and I wanted to thank him, again, for his service,” Mr. Pernsteiner commented.

   The Carnegie Corporation has provided a grant to Oregon, Wisconsin, and California State to support their efforts to assess student learning through general education in the first two years of a college experience. Dr. Zinser has been leading the effort in this regard for Oregon and the funding will assist in carrying this work forward.

   Chancellor Pernsteiner observed that a number of initiatives are being certified for the ballot. Some of these will have a direct impact on the state’s financial capabilities, some would reduce revenues substantially, still others would increase costs, and others would lock up certain fund sources that have historically been used for higher education. It was noted that initiatives such as these raise uncertainty and staff would be following them closely and analyzing the potential impacts.

   b. **Provosts’ Council**

   There was no report from the Provosts’ Council.

   c. **Research Council**

   Dr. John Cassady, newly appointed chair of the Research Council, reported on the activities of the Council. For the first time, the Research Council has developed a policy option package for inclusion in the System budget.

   Some research and economic development is driven, in part, by what individual institutions do and part of it is driven through the work of the Oregon Innovation Council, Dr. Cassady pointed out. He indicated that he has termed it “synergy and leverage.” The option package revolves around partnerships in research and, specifically, a major partnership in the area of developing sustainability research centers. The second part of the proposal is enhancements to the research infrastructure. The key to the research enterprise is based, in large part, on the success of the faculty. The ETIC proposal, for example, basically helps to develop some of the foundational support that brings top faculty, which, in turn, drives the ability to graduate
students in selected areas. The Provosts’ Council request is to provide additional support to attract high-quality graduate students. What also attracts high quality faculty are multi-disciplinary programs and core infrastructure that supports in high quality ways.

The Oregon Innovation Council’s priorities would create three new signature research centers (SRC): one in nanotechnology that has been in place for five years and two in drug discovery and Oregon Built Environment and Sustainable Technology (BEST). The groups being supported under the sustainability initiative are: the Oregon Climate Change Research Institute, just created; water researchers in what is being termed the Oregon Water Institute; Institute for Natural Resources, and the Transportation Center. Additionally, Oregon has great strengths in environmental health sciences and a federal Oregon Proteomics Consortium. “The increased investment, which is less than one percent of the research enterprise in Oregon, will increase and enhance faculty success, collaboration, competitiveness for federal funding, the ability to compete in the big science grand challenge areas, and the ability to develop initiatives across institutions,” he concluded.

It was suggested by President Ray that Dr. Cassady should return to the Board and discuss the collaboration that already exists across the System in terms of access to infrastructure and sharing of equipment across institutions. Faculty have projected that for every $1 million invested, they could leverage between $8 and $15 million in federal support. “That,” Dr. Cassady asserted, “is the kind of leverage that you can get with the Innovation Council and state investments in the research enterprise.”

Director Blair pointed out that the OUS presentation to the Legislature would be strengthened if there were clearer articulation, specifically the intended outcomes or targets that would result from the investment. Tangible deliverables would strengthen the proposal, he asserted.

d. Interinstitutional Faculty Senate (IFS) President

Dr. Lee Ayers reported for the Interinstitutional Faculty Senate, indicating that the last meeting of the group had been at EOU in June. “All seven of the OUS institutional senates had passed legislation regarding the salary funds. IFS followed up with a letter to the Governor, legislators, the Chancellor, institution presidents and provosts, and senate leadership with these results in mid-June.

IFS posed a very serious question to Chancellor Pernsteiner about the role of university presidents and “what power they hold over faculty. This concern comes from the number of noted vacancies across the System and included discussions about the process of hiring a new president and how the process of the academic search is more like a business model than it had been in years past. A recurring theme across higher education,” she noted, “is ‘taking charge of our own destiny. What does this change of leadership offer OUS and how can faculties set aside their fears of ‘us versus them’ during this critical time,” Dr. Ayers asked. Dr. Ayers provided an historical view of the academic presidency and how it has changed from educator to administrator. She noted that the role of the president is still seen as the most powerful and influential individual in the academic community. “To the external community, the president
represents the institution and its values, and leads the institution in its contributions to the community. Internally, the president is expected to direct and control the complex institution and all of its branches and headaches,” she noted.

In 2005, *The Chronicle of Higher Education* surveyed presidents of 4-year colleges and published a report. According to the survey, the number one performance indicator by which four-year college presidents measure their success is a balanced budget. Survey results indicated that financial issues permeate almost every facet of the president’s job. Fifty-three percent of respondents reported fundraising was a daily activity. “This position requires maneuvering through rapids of constant change, one who does not panic under the pressures of financial struggles, and the ability to juggle while multi-tasking is a bonus,” Dr. Ayers concluded. (A copy of the full IFS Report is on file in the Board’s Office.)

e. **Oregon Student Association (OSA) Chair**

Ryan Mann, president of the Associated Students of Oregon State University and treasurer of the Oregon Student Association (OSA) presented the OSA report. He indicated that preparation for the impending legislative session and the difficult economic context in which it will take place, had been the primary focus of OSA. The Association, for the most part, supports the policy option packages and has prioritized the policies based on their utility for students. “A tuition buy-down at regional campuses will be for the benefit of the System and we are hopeful that this policy is prioritized during the session,” he observed. “This investment in regional universities must be continued in future biennia to provide long-term viability to our regional campuses.

“Later today, the Board will be briefed on a statutory change that will change the name ‘Incidental Fee,’ to ‘Student Activity Fee.’ The OSA board has not yet had a chance to formally make an opinion on the issue, but the Board packet states that this ‘change will produce a more accurate description nomenclature for the incidental fee.’ OSA doesn’t completely agree with the statement from a student’s perspective. Many of the uses of the incidental fee are more than just activities. Making the switch could undermine the versatility and, hence, the utility of the incidental fee,” he concluded. (A complete copy of Mr. Mann’s report is on file in the Board’s Office.)

3. **Consent Items**

a. **OSU, Undergraduate Certificate in Religion and Culture**

**DOCKET ITEM:**

1. Describe the purpose and relationship of the proposed program to the institution’s mission and strategic plan.

The *OSU Strategic Plan for the 21st Century* designates teaching and research in the arts and sciences as the foundation for university achievement in scientific discovery, social and
cultural enhancement, and progress in the applied professions. The proposed Undergraduate Certificate in Religion and Culture seeks to strengthen this institutional foundation for academic excellence by providing a distinctive multidisciplinary program of undergraduate study focused by the diverse intersections of religion and culture. The program will furnish Oregon State University (OSU) undergraduates with an opportunity to complement their major field of study with a cohort of courses that encompass the academic study of experience in religious communities and faith traditions, religion and political life, religion and aesthetic expressions, religion and environmental issues, and diversity within and among religious traditions of the world. The certificate in Religion and Culture thereby contributes to the mission and reinforces the five core values of Oregon State University.

2. **What evidence of need does the institution have for the program?**

   The highest enrolled course in the OSU Department of Philosophy is a course in world religions, which is taught to over 1,000 students (over 4,000 student credit hours) on an annual basis. Approximately 25 percent of these students take upper division course work in the academic study of specific religious traditions, figures, or themes. Many of these students have expressed an interest to their advisors in taking a more structured, coherent cohort of courses in the study of religion that would be recognized on their academic transcript.

   In 2006, OSU’s Office of Academic Affairs commissioned an external academic review team to examine the visibility, identity, and rigor of the curricular offerings in the Department of Philosophy. The primary recommendation of the external review team was a need for better integration of the course offerings with religious studies content within the overall curriculum of the Department of Philosophy. This proposal for a certificate program in Religion and Culture is a direct result and seeks to be responsive to the recommendations of the review team.

3. **Are there similar programs in the state? If so, how does the proposed program supplement, complement, or collaborate with those programs?**

   There are no similar programs in the Oregon University System. The University of Oregon (UO) has an undergraduate degree program in religious studies and, through a liaison communication, the UO department chair indicated that the UO program has a different direction and emphasis, with an academic focus less on the cultural manifestation of religious life and more on the formative texts and documents internal to diverse religious traditions. The UO chair wished success to the OSU certificate in Religion and Culture and held out the prospects for future collaborations.

4. **What new resources will be needed initially and on a recurring basis to implement the program? How will the institution provide these resources? What efficiencies or revenue enhancements are achieved with this program, including consolidation or elimination of programs over time, if any?**
The certificate in Religion and Culture is a revenue-neutral program. It will not require new resources to initiate the program as it draws, with one exception, on courses that are established in the OSU curriculum. Administrative oversight of the certificate will occur through the Hundere Endowed Chair in Religion and Culture, a position already established at OSU.

All appropriate University committees and the OUS Provosts’ Council have positively reviewed the proposed program.

**Recommendation to the Board:**
The OUS Provosts’ Council recommended that the Board authorize Oregon State University to establish an instructional program leading to an Undergraduate Certificate in Religion and Culture, effective Fall 2008.

b. PSU, Ph.D. in Mechanical Engineering

**DOCKET ITEM:**

1. **Describe the purpose and relationship of the proposed program to the institution’s mission and strategic plan.**

Portland State University (PSU) has embraced the mission of supporting the needs of the Portland metropolitan community with excellent professional and graduate programs. The proposed program squarely faces the need to educate and prepare the highly skilled workforce required for the future economic well being of Oregon. If this need is not met, the expanding industry will continue to import trained talent from elsewhere while qualified Oregonians are left behind. The program will involve industry from Portland and around the state. Performing research that is important to and sponsored by regional industries will be a direct service. Further, the influx of industrial ideas and energy will stimulate the academic environment as well as the local economy.

2. **What evidence of need does the institution have for the program?**

The demand for graduate level engineering education in the Portland metropolitan area has dominated the growth of engineering programs for years. All recent developments by the Oregon University System, such as the Oregon Center for Advanced Technology Education (OCATE) and the Oregon College of Engineering and Computer Science (OCECS), have focused on graduate education. Senate Bill 504 was passed to mandate programs to serve all graduate engineering programs of the area. A natural part of that comprehensive program is discipline-specific Ph.D. programs at PSU. As one of PSU’s core programs, Mechanical Engineering is a critical part of that expansion, to serve Portland-area students and industry and to offer PSU faculty greater scholarly opportunities.
3. **Are there similar programs in the state? If so, how does the proposed program collaborate or complement those programs?**

Oregon State University (OSU) currently offers a Ph.D. in Mechanical Engineering. Collaborative research involving faculty and students from OSU and other Oregon University System institutions, and the cooperative use of laboratories and equipment, will be sought where appropriate. As an example, the Oregon Nanoscience and Microtechnologies Institute (ONAMI) serves as a vehicle to connect activity among PSU, OSU, and the University of Oregon.

4. **What new resources will be needed initially and on a recurring basis to implement the program? How will the institution provide these resources? How are the resource need balanced by anticipated student demand?**

No additional faculty will be required to accommodate the Ph.D. students anticipated during the startup mode of the program. A key driver for initiating the Ph.D. program at this time is the need to provide adequate support for the growing research programs of current faculty members and to assist in recruiting faculty for new positions as they become available. Additional workload to support the curriculum of individual or small groups of Ph.D. students will be offset through reallocation of teaching assignments to other regular faculty members and through judicious use of adjunct faculty and graduate teaching assistants. Additional permanent faculty positions will be sought as program demand is assessed and documented. Funds under the control of the Engineering and Technology Industry Council (ETIC) are dedicated to increasing capacity of computer science and engineering programs in support of the state’s high technology industry, with Mechanical Engineering a key discipline. Additional faculty has recently been added and continuing growth in outside funded departmental research will be leveraged to sustain the program through transition to steady state.

All appropriate University committees and the OUS Provosts’ Council have positively reviewed the proposed program.

*Recommendation to the Board:*
The OUS Provosts’ Council recommended that the Board authorize Portland State University to establish an instructional program leading to the Ph.D. in Mechanical Engineering, effective Fall 2008.

c. **PSU, Graduate Certificate in Public Management**

*DOCKET ITEM:*

1. **Describe the purpose and relationship of the proposed program to the institution’s mission and strategic plan.**
This program extends the mission of Portland State University (PSU) and the Hatfield School of Government to those who currently have responsibility for managing public organizations and agencies throughout the Pacific Northwest, enabling these managers to deal more efficiently and effectively in conditions characterized by decline in public support and shrinking budgetary resources. This program will also enable the state higher education system to work in closer partnership with public agencies, thus making better use of increasingly scarce public resources.

2. **What evidence of need does the institution have for the program?**

The Public Management certificate has been created to address a growing leadership crisis in the middle and upper ranks of career public service, where the General Accounting Office reported that 53 percent of federal middle managers qualified for retirement in 2004. Significant numbers of retirements over the next several years are projected in the public sector in Oregon, ranging from a high of 60 percent in middle and senior management in public safety agencies to a low of 25 percent in more recently established regulatory agencies. Similar percentages of expected retirements within the next several years are expected in the six largest employers in the Portland Metropolitan Area (Bonneville Power Administration, U.S. Army Corps of Engineers, City of Portland, Multnomah County, Washington County, and State of Oregon). Large numbers of promotions within public organizations will be necessary to fill these positions, but only a small percentage of those who will likely be promoted currently have any formal training or education to prepare them for their new leadership roles.

In recognition of this leadership succession crisis, a variety of public agencies have contacted the Hatfield School of Government’s Executive Leadership Institute to provide management training to those who will soon be promoted to line management positions. Several programs have been developed over the last six years in response, including an 80-hour public safety managers training, a year-long program for the U.S. Army Corps of Engineers, and a leadership development program for approximately 50 managers in Washington County.

3. **Are there similar programs in the state? If so, how does the proposed program supplement, complement, or collaborate with those programs?**

While other graduate programs are offered at Oregon State University and the University of Oregon with a public policy and political sciences focus, Portland State’s Public Administration program has a distinctive mission to prepare current and future public administrators. There are no other public management certificate programs specifically targeted to enhance the managerial knowledge and skills of experienced career public administrators.

4. **What new resources will be needed initially and on a recurring basis to implement the program? How will the institution provide these resources? What efficiencies or revenue
enhancements are achieved with this program, including consolidation or elimination of programs over time, if any?

This program relies on existing full-time and adjunct faculty, already reviewed by the National Association of Schools of Public Affairs and Administration. Since these faculty are currently teaching these courses for the Master of Public Administration, the program does not need additional resources for instruction. In those cases where the certificate is offered as part of agency-sponsored training programs, user fees and contract income from the sponsoring agencies will support the costs of the courses and necessary part time staff additions.

All appropriate University committees and the OUS Provosts’ Council have positively reviewed the proposed program.

**Recommendation to the Board:**
The OUS Provosts’ Council recommended that the Board authorize Portland State University to establish an instructional program leading to a Graduate Certificate in Public Management, effective Summer 2008.

d. WOU, M.S. in Management and Information Systems

**DOCKET ITEM:**

1. **Describe the purpose and relationship of the proposed program to the institution’s mission and strategic plan.**

   The objective for this new program is to produce highly skilled and well-educated managers who have strong knowledge in the areas related to Information Systems. The proposed program is wholly consistent with Western Oregon University’s mission as a university that “creates personalized learning opportunities, supports the advancement of knowledge for the public good, and maximizes individual and professional development.” The development of this new degree program is consistent with the present campus mission and strategic plan and will serve a need for both domestic and international student populations.

2. **What evidence of need does the institution have for the program?**

   This program responds directly to identifiable market needs in the region. The state agencies located in Salem and the high-tech industry throughout the mid-Willamette Valley would benefit. Proposed program graduates will be prepared to enter Oregon's expanding industries with special strengths in, and management and successful use of, technology and business activities related to Information Systems. National Occupational Outlook Statistics and Oregon Occupational Projections both report high growth rates for computer scientists and the National report shows a positive rate of growth for management. The proposed program intends to enhance these same aspects in the professional community of our region, as well as collectively benefiting social, economic, and environmental issues in the region.
According to the document, *Snapshot of Oregon’s Principal Traded Sectors*, produced by the Oregon Business Plan, high technology is Oregon’s largest industry, with 70,000 jobs, the largest share of state export revenue, and more than 10 percent of U.S. semiconductor output. Employment has grown 5.6 percent annually over the past decade. The further growth of the industry needs management people who understand the technical side of the business. The graduates of the proposed program will answer that need.

3. *Are there similar programs in the state? If so, how does the proposed program supplement, complement, or collaborate with those programs?*

   No programs with the particular content emphases are currently offered within the Oregon University System; the closest aligned program is the University of Oregon’s Applied Information Management which is delivered as an on-line program. The proposed program will serve a regional population seeking a campus-based environment, as well as Western’s campus-based international student population.

4. *What new resources will be needed initially and on a recurring basis to implement the program? How will the institution provide these resources? What efficiencies or revenue enhancements are achieved with this program, including consolidation or elimination of programs over time, if any?*

   No new resources are necessary and recurring costs will be realized by student enrollment and tuition. With the growth of this program, both the computer science division and the business division will be enhanced by adding additional faculty to teach both at the undergraduate and graduate level. Again, any new faculty would be hired by the tuition generated by the new program.

   All appropriate University committees and the OUS Provosts’ Council have positively reviewed the proposed program.

   *Recommendation to the Board:*
   The OUS Provosts’ Council recommends that the Board authorize Western Oregon University to establish an instructional program leading to the Master of Science in Management and Information Systems, effective Fall 2008.

   *BOARD DISCUSSION AND ACTION:*

   Director Van Vliet stated that he had some general comments concerning the PSU, Ph.D. in Mechanical Engineering. “The idea is great, but if you look closely and understand the dynamics of putting in Ph.D. programs, they are not what I would call, ‘locally determined.’ No one has really assessed the cost of putting in a Ph.D program. If you look at the cost of putting out one Ph.D. student is anywhere between $500,000 and $1 million. That is a tremendously high cost in a highly intense scientific field. What caught my attention in this is that there really isn’t a cost analysis in any way with the particular program. If you look at the sentence on the second page, which really caught my eye, ‘the additional workload to support the curriculum of individual and small groups of Ph.D. students will be offset through reallocation of teaching
assignments to other regular faculty members and through judicious use of adjunct faculty and graduate teaching assistants.”

Continuing, he pointed out that he didn’t see that the demand for such a program had been fully assessed or that the long-range cost of the program would be supported without sacrificing other programs at PSU. “It really shines a light on this Board’s need to look at the real fiscal analysis of putting in additional programs. I would prefer to have a moratorium on new courses for about a year, but that is not within my jurisdiction,” he concluded.

Director Kelly moved, seconded by Brian Fox to approve the other items on the Consent Agenda: OSU, Undergraduate Certificate in Religion and Culture; PSU, Graduate Certificate in Public Management, and WOU, M.S. in Management and Information Systems. Those voting in favor of the motion: Directors Blair, Dyess, Fisher, Fox, Francesconi, Kelly, Miller-Jones, Powers, Pulliams, and Van Vliet. Those voting no or abstaining: None. Motion passed.

Continuing the discussion regarding the PSU, Ph.D. in Mechanical Engineering, President Dyess asked Vice Chancellor Weeks to comment on the process for approving new programs. Ms. Weeks responded that in September, she would be bringing to the Board an academic program review policy that would be particularly focused on new programs. Additionally, it would include a review of five years of new and existing programs that would include cost analysis, sustainability, viability, impact on other programs at the institution, impact on other institutions’ programs, and so forth.

Provost Koch and Dr. Jerry Recktenwald, Chair of Mechanical Engineering at PSU provided some further background on the need and demand for such a program. Provost Koch highlighted that this current request was one that was responding to the need to grow the capacity and capability of PSU. In the recent past, PSU has absorbed a significant number of programs from the former Oregon Graduate Institute in fields of materials and metals. As a result, the faculty capacity has been growing substantially as well. A number of ETIC-supported faculty positions have also been added.

Dr. Recktenwald observed that the additional costs of the program were primarily supported by the grants that the faculty secure for the students that are hired to do the research. “We have a track record of being able to attract those grants and a sharp increase in our ability to achieve national-level recognition for the work that we are doing and the winning of those awards,” he added. Finally, he commented that a number of new faculty have been recruited in the recent past. “I was chair of the search committees and now, as department chair, I’m overseeing their growth. The real cost of not moving forward with this Ph.D. program would most certainly be the loss of some of these faculty because they are here with the expectation that they will be able to teach Ph.D. levels and to grow their programs.”

Interim President Reardon provided some historical perspective to the processes that have been involved over the years to deliver engineering in the state to meet growing demands. “It was incumbent upon PSU to continue to develop and expand our engineering programs and we have done that. And, we have done that in terms of shifting a great deal of internal resources
within the university to meet that request and that demand. In some ways, this is the final step in that process in terms of adding the Ph.D. program in Mechanical Engineering as we have done in the other areas. So, it really is somewhat disheartening for me to confront it at this point, that we were on the wrong path because, in effect, we felt that we were on the right path in responding to what we saw as an increasing desire on the part of various constituencies in the state to make this move."

Director Miller-Jones expressed support of the docket item and opined that he didn’t feel Director Van Vliet was objecting to the item but was arguing that the Board, in being faced with these types of consent items, needs to have information that addresses these types of concerns. Director Blair agreed, adding that, filtering these requests through thinking about governance, led him to the conclusion that this is an area where the Board can’t add a lot of value to the decision.

“The second thing that really concerns me is that I think Director Van Vliet has asked some very logical and legitimate questions for which we do not have answers. So, for me, the issue here is completely around process,” he opined. “For us to be trying to come in over the top on a particular degree program when all of you have looked at this very thoroughly and carefully, would not be the right answer. However, the fact that when certain logical questions are asked and we don’t have the answer to it, it leads me to believe that we don’t have a good process.”

Director Van Vliet added that it was not so much this particular program that was his concern, but rather the process that was concerning him. “We have put such strict standards on fiscal integrity in our System, and yet we don’t really demand that same type of thing on the academic side as we’re enlarging programs. These, in the long run, are going to have a definite affect on budgets and student completion and many other things about which we worry.”

Director Van Vliet moved approval of the PSU – Ph.D. in Mechanical Engineering. The motion was seconded by Director Francesconi. Those voting in favor of the motion: Directors Blair, Dyess, Fisher, Fox, Francesconi, Kelly, Miller-Jones, Powers, Pulliams, and Van Vliet. Those voting no or abstaining: None. Motion passed.

4. **Action Items**

   a. **Presidential Compensation**

In June, the Board had extensive discussions with four of the presidents with respect to the evaluation of their performance and the performance of their universities during the 2007-08 year. Those discussions concluded with some recommendations about goals for the coming year. No conclusions were reached at that time, however, regarding compensation.

Chancellor Pernsteiner noted that, on average, faculty on the campuses have received or will receive in each of the fiscal years, increases ranging from 4 percent up to an average on one campus for one year of 6.5 percent. It was within that frame that the Board was operating, since there is a desire to keep presidential salaries in relationship with those of the faculty.
The Chancellor made the following recommendations:

- President Cullinan for 2008-09: a 4 percent increase to $185,460 and a contract extension through June 30, 2010;
- President Frohmayer, a 5 percent increase and the UO Foundation has agreed to increase the supplement income by 5 percent, bringing the total compensation from both sources to $444,960 for the coming year. This includes his endowed chair in the School of Law;
- President Minahan, a 6.5 percent increase to $190,020 and a contract extension to June 30, 2011;
- President Ray, a salary increase of 5 percent and the OSU Foundation has agreed to raise the supplemental amount by a similar percentage and that his contract be extended through June 30, 2011; and
- President Lund, who was commended for having done an outstanding job of changing the trajectory of EOU, a one-time bonus of $9,600 in the 2008-09 year.

Director Pulliams moved, seconded by Director Blair, approval of Chancellor Pernsteiner’s recommendations. Those voting in favor: Directors Blair, Dyess, Fisher, Fox, Francesconi, Kelly, Miller-Jones, Powers, Pulliams, and Van Vliet. Those voting no or abstaining: None. Motion passed.

b. Board Elections

President Dyess presented the slate of Board officers for the ensuing year:

- President: Paul Kelly
- Vice President: Jim Francesconi
- Second Vice President: Tony Van Vliet
- Chair of the Finance and Administration Committee: Don Blair

These officers constitute the Executive Committee. Additionally Hannah Fisher was nominated as the Student Member and Dalton Miller-Jones as the faculty member on the Executive Committee.

Director Pulliams moved, seconded by Director Powers to approve the election of the above officers. Those voting in favor of the motion: Directors Blair, Dyess, Fisher, Fox, Francesconi; Kelly, Miller-Jones, Powers, Pulliams, and Van Vliet. Those voting no or abstaining: None. Motion passed.

Director Kelly thanked the Board for their confidence in electing him president of the Board and indicated he would like to operate as a team, recognizing the strengths of individuals and institutions and building on those.
c. Approval of Permanent Adoption Of Amendments to 580-060-0000 through 0060 (Real Property, Facility, and Campus Planning); 580-061-000 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)

DOCKET ITEM:

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 two years and were the result of significant discussion and collaboration on the part of the Chancellor’s Office, OUS campuses, and DOJ. 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. These corrections were adopted under revised temporary rules 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 recommended that the Board adopt the new version of the referenced rules as included in the docket and suspend the previous version of the referenced temporary rules; to be effective upon filing with the Secretary of State.

DIVISION 60
REAL PROPERTY, FACILITY, AND CAMPUS PLANNING

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.
**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.

**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.

**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:
   - Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value, and
   - 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:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

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.
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 "Awards" 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 a 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.

(37) 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.

(38) "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.

(39) "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.

(40) "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.

(41) "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.

(42) "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.

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

(44) "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.

(45) "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.

(46) "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.

(47) "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.

(48) "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 results related Contract terms;
   (f) All information describing how the Contractor was selected, including the basis for awarding the Contract;
   (g) The names of Entities and cost estimates considered.

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

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

580-061-0035
Emerging Small Business Program

(1) The Board encourages participation of Emerging Small Businesses by creating an Emerging Small Business Program. The Emerging Small Business Program is limited to businesses that meet the definition in ORS 200.005(3) and that maintain a current certification issued by the 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 Solicitation Document Provisions

(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.

(12) 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
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.

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.

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.
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.

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.

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.

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 Bids from Responsible Bidders that are identical in price, fitness, availability, and quality and that meet all the requirements and criteria set forth in the Solicitation Document.

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

(a) An Emerging Small Business that meets the definition in ORS 200.005(3) and that maintains a current certification issued by the 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:
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

580-061-0155

Negotiations

(1) 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.

(2) The Institution may, if it has given notice in the Solicitation Document, also commence negotiations in accordance with sections (3), (4), (5) and (6) of this rule with Proposers in the competitive range. For purposes of this rule “competitive range” means the highest-ranked Proposers based on evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Solicitation Document.

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

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

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

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

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

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

580-061-0160
Disqualification from Consideration for Award of Contracts
(1) An Institution may disqualify an Entity from consideration for award of Institution Contracts for the reasons listed in subsection (2) of this section after providing the Entity with notice and a reasonable opportunity to be heard.
   (a) All OUS Institutions may rely upon a disqualification of an Entity by another Institution. The Chancellor’s Office will maintain a current roster for Entities that have been disqualified.
   (b) In lieu of the disqualification process described in this rule, an Institution contracting for a Public Improvement may petition the Construction Contractors Board to disqualify an Entity from consideration for award of the Institution’s Public Improvement Contracts for the reasons listed in subsection 2 of this rule.
(2) An Entity may be disqualified from consideration for Award of a Contract for any of the following reasons:
   (a) A primary employee of the Entity has been convicted of a criminal offense as an incident of obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;
   (b) A primary employee of the Entity has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the person’s responsibility for the Entity;
   (c) A primary employee of the Entity has been convicted under state or federal antitrust statutes;
   (d) A primary employee of the Entity has committed a violation of a contract provision that is regarded by an Institution or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a contract or an unsatisfactory performance in
accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Entity may not be considered to be a basis for disqualification;

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

(3) An Institution will issue a Written decision to disqualify an Entity under this section. The decision will:
   (a) State the reasons for the action taken; and
   (b) Inform the disqualified Entity of the appeal rights of the Entity under ORS 279C.445 and 279C.450.

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

(5) Appeal of Disqualification. An Entity who wishes to appeal disqualification 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.

(3) The selection of a Contractor identified in a Grant application or proposal is exempt from subsection (1).

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.

(lik) 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.

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

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

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

(9) Special Entity. 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:
580-063-0015
Procurement and Contracting Procedures
The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of Construction-Related Services and Professional Consultants.
Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0020
Methods of Procurement
Institutions will use the following methods of procurement when procuring Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.
(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.
(2) Informal Procurement. A competitive process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.
(3) Formal Procurement. A Competitive Process where the Institution:
   (a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.
   (b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, institutional website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.
   (c) Conducts the procurement in accordance with Chapter 580, Division 61, section 0000 through 0160.
(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Contractor or Professional Consultant for a Contract or Public Improvement Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract or Public Improvement Contract with any qualified Entity or Professional Consultant for services included in the scope of the Emergency declaration. The
Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

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

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

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

(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.

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

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

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

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

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

580-063-0030
Contracts for Construction Related Services
Institutions will use one of the following 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.

(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 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 more, 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

BOARD DISCUSSION AND ACTION:

These temporary rules were adopted in February 2008 and, in the meantime, a public hearing was held. No comments were received.

The OUS procurement rules have undergone substantial restructuring and revision. Minor changes have been received from the campuses, the Department of Justice, and various contracting professionals on the campuses. Those have been incorporated into the permanent rule.

Director Blair asked if there were any changes in the policy that were of a substantive nature or if there were any areas that were troubling to staff from a policy standpoint.

Mr. Hagemann, in responding to the second question, indicated there were no troubling areas on the policy level. This rule has undergone substantial legal and policy review.

Two substantive changes were noted, however. The first related to situations where all of the bids might exceed the cost estimate. There would be negotiations with individuals and attempts made to determine whether or not to accept a bid from one source or cancel the
potential project altogether. If there is any chance that this situation might occur, the decision was to just put a caveat to that effect in the RFP.

A second issue would be in 580-063-0020, where another type of procurement has been added. A category of “special procurement” has been added on the advice of the Department of Justice. “A special procurement would be a situation where the Board, and only the Board, would be able to exempt a procurement from competitive process. The reason the Department of Justice advises this is that you, as a Board, have clear statutory authority to do this,” Mr. Hagemann explained.

Vice Chancellor Kenton added that, since the campuses have different preferences, styles, and methods, there was an attempt to construct a flexible approach that accommodates these. The new rules give broad latitude in some areas, but there are, he offered, sufficient checks and balances.

President Dyess suggested that there might be cost savings in a System-level examination of procurement. Dr. Kenton responded that this was already being done in some areas such as software purchases that have included both OUS and community college-wide activity that successfully concluded with a good pricing result. On the other hand, he explained, there are vendors in the local communities that want and need access to the business of the institutions. “So there are some community relationships and other things that need to be brought to the fore in that process. It is balancing that ‘best price’ buying from a distant vendor versus supporting the local region and community,” he concluded.

It was moved by Director Fox, seconded by Director Van Vliet, to approve the staff recommendation to adopt the new version of the referenced rules as included in the docket and suspend the previous version of the referenced temporary rules, to be effective upon filing with the Secretary of State. Those voting in favor: Directors Blair, Dyess, Fisher, Fox, Francesconi, Kelly, Miller-Jones, Powers, Pulliams, and Van Vliet. Those voting no or abstaining: None. Motion passed.

d. Best Practices

**DOCKET ITEM:**

In April, the Board was asked to evaluate best practices for boards in Oregon. The evaluation was constructed in an “all or nothing” fashion. That is, if seven Board members responded “yes” to a particular question and one responded “no,” then the response had to be “no.” Ms. Ruth Keele, Director of Performance Measurement, added that the report that has to go to DAS is the aggregate proportion of the total number of best practices that are deemed by the Board as a whole to be met by current practice. “We may be asked to discuss it a little bit more fully and we may, at some point, also be asked to report some of the breakout answers. But our primary performance figure is a simple proportion,” she explained.
There were basically four overarching categories in the survey: 1) executive director selection, expectations, and feedback; 2) strategic management and policy development; 3) fiscal oversight; and, 4) Board management.

Under the category of fiscal oversight, the eight Board respondents were in unanimous agreement that it was comfortable, in terms of best practices, with the category. In the area of Board management, it was a six-to-two vote. Under Board management, there were three items: Board coordinates with others where responsibility and interests overlap. It was pointed out that the Board is actively involved in the Joint Boards, K-12 high school graduation, and with the community colleges. “The question is,” President Dyess pointed out, “are there other things that you would like to see us do there. We have a 7:1 ratio and it would be interesting to hear from anyone who has a concern.” There was agreement that on item #13, there could be a unanimous vote. A recommendation might be that the Boards need to be crisper about the decision-making criteria as the relationships continue to develop, particularly in terms of the Joint Board work.

Item #14, focusing on attending appropriate Board training sessions, related to new Board member orientation and training. President Dyess said that she had attempted to talk individually to new Board members about important topics and visits have been made to the campuses and these have been useful. “We did have a suggestion at our meeting yesterday that we could make this a little more formal and more robust,” she added. Training is provided for new Board members at the state level, but these are poorly advertised and some new members indicated they had never received any information concerning them. Director Kelly suggested that materials should be compiled for new Board members on the history of the System, governance in other states, and the training that could come through AGB (Association of Governing Boards). Director Fisher interjected that student Board members have a shorter term of service than other Board members and, therefore, “initially need a lot of extra attention from individual Board members and the Chancellor’s Office because our learning curve needs to be shorter.” It was noted that the Board does not do an annual self-evaluation that, it was agreed, could be beneficial. The vote in this category was 50/50 and represented a call to action on the part of the Board.

In the category of executive director, it has highlighted that there has been a performance review and setting of expectations for the coming year. Next month, the Chancellor will bring to the Board System-level indicators and goals for the coming year that will feed into the Board’s strategic plan. There was agreement that there was a “yes,” vote in this category.

On question #6, the Board is appropriately involved in policy-making activities, there were six “yes,” and two “no,” answers. One specific comment was that, “the Board should have complete authority to set tuition and moderate cost and maximize the value of the University System to the state.” It was pointed that the Board already has that power, so the vote was counted as a “yes,” response.

On the topic of “agency policy option packages are aligned with their mission and goals, the decision was to make it a yes vote.
Mr. Hagemann commented that he saw the answer to #14 as “yes,” and #15 as a “no,” which is that the Board reviews its management practices—that it would be a good segue into the Board beginning to “re-evaluate. So, the one that we’re not comfortable saying ‘yes’ to is the one where we need to take the initiative and the responsibility to do something to implement this strategically.” It was agreed that as governance changes are considered, this needs to be one of the aspects that the Board takes very seriously so that it does evaluate its own performance on an annual basis.”

It was moved by Director Van Vliet, seconded by Director Miller-Jones, to approve the report as discussed. Those voting in favor of the motion: Those voting in favor: Directors Blair, Dyess, Fisher, Fox, Francesconi, Kelly, Miller-Jones, Powers, Pulliams, and Van Vliet. Those voting no or abstaining: None. Motion passed.

e. OUS, Continuing the Investment in Oregonians for our Future (2009-2011 Biennial Operating Budget Presentation)

DOCKET ITEM:

Prior to submission of the 2007-2009 budget, the Board undertook a fairly significant strategic planning process. Long-term financial models were developed to begin to predict what would be required to rebuild the quality levels of the System. The Board recognized that, given the magnitude of the resources that would take to get to the desired levels, it would be impractical to believe this could be accomplished in one legislative session. However, there was an agreement with the Governor and legislature that this would be a ten-year process. The System is currently in year two of that agreement and the budget before the Board is for years three and four. That is why, Vice Chancellor Kenton explained, the item is called, “Continuing the Investment.”

“As our population growth is changing, the diversity of our population is changing, our older citizens are more educated than the younger citizens and, as they retire, we lack the replacements. It really is a make-or-break business decision if we are going to accomplish the needs of the state and the citizenry. We have to have a strong and robust educational system, generally, and higher education, in particular,” Vice Chancellor Kenton emphasized. “We have this living crisis with a less-educated, lower skilled workforce, unable to support business and industry. We are losing in the business recruitment areas because we don’t have the same research infrastructure that other states have.” Added to these issues, the state must increase the educational attainment rates for populations not reached before or not reached with the effectiveness and determination required. Dr. Kenton applauded the work of Director Miller-Jones’ Committee on Participation and Completion that had done an excellent job of highlighting these issues.

Three basic items are included in the current budget request: funding of the base; rebuilding the quality of the System; and, investing in the faculty through increased faculty salaries and resources to add faculty to lower the class size ratio from 24-25:1 to 21:1. The plan is to
enhance access by limiting tuition and is premised on a continuing commitment to limiting resident undergraduate tuition to no more than the projected change in median family income that currently is estimated to be about 3.6 percent per year.

Enrollment funding was frozen in 2002, but growth occurred between 2002 and 2007 that was not funded. “Last session, due to the generosity of the legislature, we were able to fund half of that existing growth. We are asking to fund the other half of it this session, plus the projected growth in enrollment in 2009-2011,” Vice Chancellor Kenton added. “That is about a $33 million request – about $13 million of it to go to the past growth and about $20 million to the future growth.”

Director Blair highlighted that it was important to be very sure that the legislature understands the implications of this approach and the linkage to appropriate funding. “When it is a policy package, there is a yes/no decision and the implications are clear. When it is embedded in the way we build the budget, there may be a tendency for people not to sign-off for the appropriate level of funding and just assume that, somehow, we can cover it anyway.”

Another aspect of the budget that was emphasized in the Strategic Planning process was a need to maintain the System facility assets better. There is a significant deferred maintenance backlog and current needs are also not met at the level needed to keep that backlog from growing. Capital repair requests are included in both the operating budget and the capital budget that are duplicative. It was done this way to reinforce the importance the Board has placed on the need to invest in facilities.

In terms of funding the base budget, Vice Chancellor Kenton indicated that he was proposing that OUS ask for an additional $154 million in state General Funds for the components he had mentioned. This would constitute the Essential Budget Level (EBL) for the state.

Director Blair observed that the projection was for a fairly significant acceleration of enrollment in the next two biennia and asked how confident the Board could be in those projections. In response, Vice Chancellor Kenton indicated there was a lot of confidence for several reasons: 1) the Shared Responsibility Model had opened the door for many students who, in the past, felt there was no way they could go on to college; and 2) higher education enrollment is inversely correlated with economic trends and, therefore, as the economy softens, typically more people return to college. Additionally, evaluations of presidents’ performance have been linked to enrollment growth and increased attention to retention of students will be leading to increased enrollment.

Dr. Kenton provided an explanation of the budget request process. The first step is for the Board to approve the budget; if approved, between now and the end of August, staff will transcribe it into the formats required by the state and then submit it to the Department of Administrative Services (DAS). Director Blair indicated that he would be much more comfortable approving the budget if there were a very clear understanding of what was going to be invested and what the return would be. “And, I realize that the ability to link these things together is not perfect and that judgment is required. I think in terms of the understanding we
would have of saying we are asking the legislature for this amount of money to deliver this particular result would make us feel more confident in terms of endorsing the budget as well. So, qualitatively, I can’t disagree with any of this, but I just don’t have as much clarity as I would like to have at this stage of the process,” he concluded.

In an attempt to clarify the sense of Director Blair’s comments, Director Van Vliet added that the legislature would be looking closely on return on investment and the percentages of increase each unit in the education arm is contributing to it. “Are we going to increase our graduates by 10 percent or 5 percent or something along that line on which we can hang our hat. Because the legislature is going to be looking very closely at the overall Joint Boards procedures as it comes forward in the DAS budget.”

President Dyess asked Vice Chancellor Weeks if the Board would have the Return on Investment (ROI) indicators for the September meeting. She responded that staff would make it a priority.

Relative to the policy option packages, OUS would be asking for an $87.3 million investment in the following initiatives:

1) $15.5 million investment in the student success initiative, which is a result of Director Miller-Jones’ Committee on Participation and Completion;
2) $5 million investment in graduate education in the second year of the biennium;
3) $7 million investment in research and sustainability;
4) $3.4 million for the Portland Higher Education initiative;
5) $15 million request for the land grant mission of Oregon State University, including the Agricultural Experiment Station, the roll-up of the honey bee research funding, the Extension Service, and the Forest Research Laboratory; and
6) $4 million for the regional tuition buy down to allow both Eastern and Southern Oregon Universities to maintain their tuition for resident undergraduates at the current rate.

Director Fisher asked if the Board was trying to get the number of policy option packages to a certain number. The answer was no, but it was underscored by Director Blair that, “as a Board, we have to keep our messages very simple. I think we have to stay very focused. I still believe that we have a tremendous number of things that are in our existing list of priorities and our existing institutional deployments that are under-funded and not appropriately resourced. Yet we keep putting new things on the table – new initiatives. And, those may be very laudable, but when we’re not funding what we’re already trying to accomplish, we end up with a whole raft of under-funded initiatives as opposed to a few that we can actually drive to conclusion and deliver the results. I keep asking myself, ‘If I had this $87 million in the System and I could spend it on anything that we needed to get done, is this where I would spend it?’ And the answer, subjectively in a lot of cases, was no. There are a few of these that are clearly focused on things that we have said are vitally important to us and really move the needle on performance metrics. I feel like we’re trying to do too much in these policy packages and I wonder if our messages are not stronger by going in and saying, ‘This is what’s required to fund this System appropriately; we are willing to be accountable for delivering the results; and, you need to give us more flexibility on how we use these resources,’” he concluded.
Additional conversation revolved around the way in which the higher education budget has to be laid out for DAS and the governor’s office. President Frohnmayer observed that the process would never change if the appropriations process, itself, structurally were never changed. “If you compare this to the appropriation for the other education sector, K-12, where it is, ‘shall we or shall we not spend $6.1 or $6.3 billion in one vote, one time, one category,’ as opposed to 6,000 categories within which Jay Kenton and George Pernsteiner and others have to put the higher education budget. It is massively disproportionate to the responsibility and the accountability that is involved. And, it is structural. This Board could speak, as a Board, as a policy-maker, appointed by the governor to that fact. But otherwise, it is a biennial recurring cycle that will rotate back and create the same set of frustrations,” he emphasized.

Chancellor Pernsteiner reminded the Board that last budget cycle, the attempt was made to present the budget as a whole, not 6,000 parts, but DAS would not accept it. Attempts have been made to change the process, but without success. President Ray and President Mary Spilde of Lane Community College are chairing a gubernatorial commission to examine the OUS budget process and develop a postsecondary education quality model. Part of the charge is to have some of the points that have been raised examined and changes proposed.

In attempting to move the budget request forward, Chancellor Pernsteiner demonstrated how the Board, through one or the other of the councils, one of the committees, or through the planning process, has already studied each of these policy option packages and, for many, metrics have already been established. “Most of these things fit directly into one of the two principle priorities the Board established in December. Either they will improve the education attainment of Oregonians or they will improve the advancement of knowledge through research.”

Director Kelly moved approval of the staff recommendation for the proposed 2009-2011 budget request. Director Van Vliet seconded the motion with the suggestion that the term “strategic investments” be used for the $87 million policy option packages. The motion included three amendments that were presented.

Director Blair asked for clarification on the dates that are involved in the budget preparation process. Chancellor Pernsteiner reiterated that the first date of import is August 31, at which time Vice Chancellor Kenton and his staff have to submit the line item budget to DAS. Discussions will be held with DAS and the governor’s office between then and sometime in October or November when, basically, the final budget must be prepared. Once the governor’s budget is released, it is his budget and OUS cannot make any further changes.

f. OUS, Capital Construction Budget Request, 2009-2015

DOCKET ITEM:

The Capital Budget Request includes the authority to undertake projects (spend resources) and the authority for the state to borrow money to fund some of the projects. A process of review and evaluation of each project has been used in developing the $1.3 billion capital construction and to determine how to best utilize limited resources while at the same time allow for continued success within academic and auxiliary programs. The last biennium saw the passage of the most successful capital budget ever, almost doubling of state support.

The Capital Budget can accomplish three things: 1) reinvestment in current buildings; 2) create or modify existing buildings to improve the performance of programs; and 3) access, which relates to projects that add space for enrollment growth. The largest share of this biennium’s request falls within the Systemwide category that pools the capital and deferred maintenance funds that are received from the state.

In the Education and General budget, there are 16 projects that are typically state-supported buildings that include classrooms, laboratories, libraries, offices, utilities, plants, and administrative offices. The third category is auxiliaries that comprise 6 percent of the request and include self-supported projects such as athletics, housing, and dining. Finally, there are student building fee projects, about 7 percent of the total amount, that are funded by student fees and are initiated by each institution’s student government.

Totaled, the 2009 Capital Budget request includes 40 projects and the majority of the funds are the responsibility of the campuses. Since 1989, the average state funding has been approximately 23 percent of the total adopted budget. The top two OUS priorities are the capital repair and deferred maintenance projects.

Director Blair inquired as to what extent there are “real” programs or initiatives ready to move into the Life Sciences Building. OHSU Provost Hallick responded that about 80 percent is a realistic estimate; in fact, she estimated that, at this point in the planning, the building is close to being oversubscribed – not under-subscribed. “About half the building is education related and about 80 percent of the other half is research-oriented. But it is a mix of interdisciplinary institutional research and incubator space for industry.” Director Francesconi added that there is a tremendous amount of institutional collaboration on this endeavor and a lot of support from the political and business establishments.

Director Van Vliet moved, seconded by Director Powers, that: 1) the Board authorize the Chancellor or designee to prepare and submit to the Department of Administrative Services a proposed 2009-2015 Capital Construction Program in accordance with the materials presented in the docket; 2) the Board authorize staff to apply for the necessary grants to seek bonding authority and Certificates of Participation authorizations to effect the projects and purchase the equipment and systems described in the docket; and 3) that the Chancellor or designee be authorized to make any technical adjustments required to the program during the ensuing
period prior to the end of the legislative session. Those voting in favor of the motion: Directors Blair, Dyess, Fisher, Fox, Francesconi; Kelly, Miller-Jones, Powers, Pulliams, and Van Vliet. Those voting no or abstaining: None. Motion passed.

5. **DISCUSSION ITEMS**

a. **Board Focus Group on Governance (Kelly)**

Director Kelly indicated he hoped that out of the conversation would come some of the key aspects of the current governing structure that are working well and secondly to identify and discuss some issues for further consideration and potential change in the current structure that would improve the functioning of the Board. He observed that the board has direct relationships with both the Chancellor and the university presidents; and, in turn, the Chancellor has a direct relationship to the university presidents. Some of these relationships are dictated by statute.

A topic that has been under discussion for a considerable amount of time is whether, at roughly 16 percent state support for OUS, the System and the institutions should be the subject of as much control from the state as currently exists. Should we be pursuing further the concept of running the System as a portfolio? Should the Board focus on policy leadership versus a kind of regulatory and administrative control over the System? In short, where should the Board’s focus be? Policy? Regulatory and administrative? Is the Chancellor really the CEO of the System in the classic sense?

Vice Chancellor Hagemann was asked to review areas of the statute that deal with delegation of authority to the Board. He indicated that the State Board of Higher Education has fairly wide statutory authority and the delegation question that Director Kelly had mentioned was a clarification of the statute and how this Board can delegate that authority. Specifically, in ORS 351.060, there is a long list of the specific authorities that the Board has, ranging from the ability to initiate lawsuits to controlling property. There is also a fairly exhaustive list of powers that the Board possesses.

Continuing, Mr. Hagemann indicated, “The last subsection of that statute is that the Board can delegate these powers to institution presidents. But there is no mention in that statute of the Board having the authority to delegate to a subcommittee of the Board or the Chancellor as an executive officer. So you have that separate from whole delegation calculus on exactly what the legislature needs to say in order for an agency to delegate its powers. We submitted a legislative placeholder to be very clear that this Board, in using its powers, can delegate to its executive officer, the Chancellor, to keep institution presidents in there, or to a committee of the Board. So that there’s really no question, you know, there’s a long delegation calculus that we could go into and I can describe to you how that evolved.

“To be clear, to make that legislative change would be the easiest and clearest way for everyone to be on notice that this Board, in its governing power, has the ability to that. That is what the legislative placeholder says,” he concluded.
Director Kelly noted that having the Board meet 11 times a year leads, to some extent, to the Board dealing with more minutiae than if it met less frequently. Another topic for consideration is whether the continued discussion of governance should reside with the Executive Committee or continue to be the focus of a work group.

President Dyess suggested that another perspective on governance is to consider what aspects of the Board work should continue to be the purview of the Board. She suggested there were four areas: 1) leadership – selection and evaluation; 2) financial standards and consistency; 3) strategy direction of the System, including institutional mission integrity with direct input from key constituents such as presidents, IFS, OSA, and so forth; and 4) policy.

Several Board members underscored that the Board needs to be involved in areas where it clearly adds value, not get mired down in less important matters.

Director Blair concurred with President Dyess’ points and added that implicit in the conversation is that there is a vision of what the System should be and how it should work. He underscored that one of the key aspects of the Strategic Plan that affects governance is the question around where on the continuum between decentralization and centralization does the Board want/need to be. “In 1999, the Board weighed in and said, ‘This is seven institutions and the institutions should do what they feel is best,’ and it felt a lot like the articles of the confederation. There were some times, since then, whether it be driven by the personality of the Chancellor or what was going on at that particular point in time that the System was at the other extreme where it was very centralized and there was a lot of academic control over the System out of the Chancellor’s Office. So the question we explicitly talked about was where on that continuum do we think we should be?

“I think we didn’t feel as if the System should be dictating the operations within the institutions, but at the same time, we believed that a System can better serve the citizens of Oregon than seven separate institutions,” he continued. “As I reflect on where we are right now, I think that we have certainly gotten very strong leadership on our campuses. The institutions have a lot of strong accountability for what they do. To me, it feels as if the biggest gap we have is our ability to operate as a System. And the practicality, from my view, is that the Board, working on a part-time basis, cannot operate the System. Therefore, if you want to run a System that has some integration to it, you are going to have to build some more central capability to run it as a system. That means that we have to figure out how the combination of the presidents and the executive staff at the Chancellor’s Office can take on a lot more responsibility for the operational decisions of the System and for proposing a strategic direction. It is the Chancellor, the staff, and the presidents, but there has to be clarity of how that group operates. I think it is elevating the Board to the four things that President Dyess listed.

“I think it is important for the Board members to weigh in on the whole conversation about centralization and decentralization because it is vital for the System to understand what the vision of the Board is,” he concluded.
Clarifying the point of centralization vs. decentralization, Director Blair added that what you strive for is decentralized decision-making in a strategic framework that is set up for the System. The first decision must be where on the continuum the Board wants to be in view of a set of decentralized decisions within a strategic framework. “One of the things that I don’t want to leave you with is a perspective that this should be management by committee. I think the Chancellor needs to be the CEO of the System. What that means is not entirely clear. But if you have a situation where you have seven presidents and an executive staff and the Chancellor and you don’t define the relationship among those people, then the Board is ultimately going to end up deciding,” Director Blair observed.

There was considerable discussion about how a system with more decentralization of decisions would operate and the degree of involvement and control that would be appropriate for the Board. Setting tuition levels was given as one example.

President Ray added that a lot of the ways in which he feels constrained have nothing to do with the Board or how the System operates. “They really have to do with the kind of policy packages that we are talking about and all of the things that the state tells you, you have to tell us that we have to do and respond to you and through you to the legislature or whoever before we can actually do anything. I think we are terribly micromanaged, but I don’t think it is the Board. To the extent that we are dealing with that – not as an internal governance issue but as a compact with the state about how the whole System ought to operate, that is helpful.”

Director Kelly asked if he could assume that there was agreement on the five areas of responsibility that had been mentioned: leadership, financial standards, strategic planning, policy-making, and political advocacy. It was observed that the Chancellor and his staff and the presidents are under tremendous pressure for a wide variety of constituencies, not the least of which are the political institutions. As state employees, there are certain things that they can or cannot do comfortably and one of the jobs of a citizen Board is to provide a level of support, air cover, challenge, and backbone, to support them in their work.

In setting the future agenda, Director Kelly requested that Mr. Hagemann develop further detail on what legislative changes may be needed in statutory language to ensure that the Board has the maximum capacity to delegate authority. Finally, he requested that there be further discussion regarding the number of Board meetings per year. He and Chancellor Pernsteiner agreed to work on a proposed meeting schedule.

b. Board Focus Group on Regional Universities (Blair)

Director Blair began the discussion on the regional universities by emphasizing the importance of these institutions to the system. They play an important role in the Board’s access strategy, particularly for some of the underserved populations of the state. Additionally, they are contributing to knowledge creation, albeit not at the same level of some of the larger universities and finally, they are providing very important benefits for the local regions in which they reside.
The regional universities have been under severe financial pressures. When state funding is under pressure, it has a disproportionate impact on these institutions. One of the contributing factors is that by size, they are sub-scale. The general rule of thumb is that there need to be at least 5,000 students to sustain a critical mass. Another factor affecting these institutions is that they have, for the most part, been undergoing enrollment decline in the recent years.

A major question for the System is how resources are deployed across the System and how to get to the point where there are the greatest efficiencies while at the same time assuring that all students are receiving the benefit of a high quality education.

The Focus Group did not shy away from the fact that there needs to be change. The issue is, what kind of change has to occur to make these institutions as efficient and as high quality as possible. “The question is,” Director Blair explained, “are we going to change assertively, proactively to get us to a new place or is change going to be forced upon us from lack of resources or some mandate coming from a political standpoint. My strong belief is that we would all prefer the first one, which is to direct that change and make the change proactive and positive. How are we going to change; not if we are going to change.”

A consultant was engaged to do two things. First, the consultant was asked to determine if the regional universities could achieve better effectiveness, increase enrollment, as well as better efficiency – administrative efficiency and cost savings – by sharing some administrative and student services. The focus was most specifically on admissions, financial aid, and the duties of the registrar. Secondly, the consultant was asked, “If you took a clean sheet of paper, how would you operate these services based on best practices and innovative ideas from around the country or the world.”

Among the consultant’s recommendations was one around student applications. The recommendation actually included all seven institutions, not just the regional universities. A common student application process, either a physical or on-line one-stop-shop process that is easily accessible and easy to use was the recommendation. The system, obviously, needs to be easy to access and used with an integrated set of interfaces. These concepts are embedded in one of the policy packages being put forward. Implementation of such a process has not been quantified and there is no assurance of what the return on investment might be. The group agreed to take the next step of developing the investments that would be required, the possible returns, and a timeline upon which it could be executed. The result of their inquiry was that sharing these services might, at some point, be beneficial, but that it wasn’t the highest priority at the present time.

President Minahan added that the group actually had some more do-able ideas about how to cooperate than the consultant because they know their institutions and the culture. There were two important messages that emerged, he added. “The college population in Oregon is changing quickly by ethnicity. There is virtually no one who can afford to miss the notion that we have to deal with first generation students that are not the traditional group that we have seen in the past. Secondly, whether or not we can increase productivity. One of the instantaneous ways we can improve productivity is to improve our miserable retention rates.
That doesn’t require additional staff, although it may in terms of advising and counseling, but we need to do that rapidly,” he concluded.

President Lund added that more emphasis needs to be put on recruitment from the community college base as well as recruitment of other kinds of non-traditional students who could be recruited. Some of the institutions have found savings with shared purchasing.

Returning to the issue of a shared student application strategies, Director Blair noted that it has a lot of very positive implications for the System in terms of putting the “net” out and assuring that if someone applies to one institution and they don’t get in, but they are a resident student, that they are not lost. There needs to be a way to figure out how to keep them in the System, somewhere. “The group is relentlessly growth-oriented and wants to educate students. I recognize Western in terms of some of the things that they have done in terms of recruiting nonresident and international students. Recruiting nonresident and international students, increasing retention, increasing postsecondary participation, or recruiting high school graduates – all of those are things that we know how to do. My understanding economically, is that we are not capacity constrained, particularly at the regional universities and the financial capacity that international and nonresident students provide creates opportunities for Oregon’s resident students. We need to make sure that every one understands that,” he emphasized.

Relative to productivity and cost management, several ideas were floated that have a great deal of potential. These included: converting the quarterly calendar to a semester one; pushing online instruction, which could potentially help on both the revenue side as well as with productivity of faculty; consolidated purchasing; and aligning and consolidating financial functions.

President Ray added, “A great team celebrates excellence within the team. But we don’t lose sight of the fact that we are a team and we don’t drive everyone to mediocrity. We can be distinctive, but the team aspects ultimately bond us together. It is striking that balance.”

6. **Committee Reports**

   a. **Standing Committee Reports**
   There were no reports.

   b. **Other Board Committees**
   There were no reports.

7. **Public Input**

Ms. Laurie Davidson, a Library Position 3 with the Hammersly Library services at WOU, appeared before the Board to speak on behalf of the classified staff and the SEIU at Western. “Within the OUS regional universities, we have grown and we have survived. A lot of this is because we can provide personalized services to our students,” she said. “We would like to see these services preserved and the question is, ‘How do you do this?’
“We believe that you do this by taking care of and honoring your people. Those two groups of people that really need to be looked at in regard to these services are first, our student populations – the people who are enrolled in our institutions. These are our customers. The second people are our employees, including our faculty and staff.

“As far as the OUS employees, the study and the manner in which it was conducted and implemented, especially in regard to the RFP process, has potentially affected the OUS employees, making them feel devalued, vulnerable, expendable, and dismissed. Part of the question that you have to ask yourself is, how are you going to take care of our staff and our faculty during this process? You can do this with full disclosure. You can do this by being open with your communication, listening to your OUS employees and faculty.

“We would like and are willing to be cooperative. We encourage anything that will create an efficient system that will make a positive change to help us provide better services to our students. We would like you to seriously and strongly consider maintaining an on-services campus whenever possible because it provides that.

8. **Board Comments**

Director Blair commented that he hoped there was a recognition that we had no intention of devaluing the efforts of any employees. “We certainly were trying to look at this with an open mind, working with the dynamics of each institution. So, if in some way there was a perception that we were trying to be high-handed or in some way devaluing our employees, that was entirely unintentional and I certainly apologize for that. That was never the intention,” he offered.

“The reason we look at these things very carefully is to try to make sure we assess all of those different implications. So, before we make any decision to do anything like this, we would obviously need to do a very exhaustive analysis of that. My point here is, if we, in some way made people feel that somehow their efforts were not valued or that they were not valued as individuals, that was never our intention and we certainly apologize for that.”

In closing the discussion, President Dyess added that the Board and the institutions have to look at changes and if all of these are personalized, there will be issues. “My message to all employees within the OUS is that we are going to be facing change. There will be a lot of things that we will be examining. It is going to happen. We are not going to shy away from looking at different alternatives. We’ll look at them all.”

9. **Delegation of Authority to Board’s Executive Committee**

Director Van Vliet moved, seconded by Director Fox to approve the Delegation of Authority as presented in the docket. Those voting in favor of the motion: Directors Blair, Dyess, Fisher, Fox, Francesconi; Kelly, Miller-Jones, Powers, Pulliams, and Van Vliet. Those voting no or abstaining: None. Motion passed.
10. **ADJOURNMENT**

President Dyess adjourned the meeting at 2:50 p.m.