

OREGON INSTITUTE OF TECHNOLOGY

Purchasing Policy **OIT-40-020**

This policy is written to meet the requirements of OAR 580-040-0200 through 580-040-0295.

Purpose

- (1) Establish competitive procedures that are flexible enough to allow OIT to purchase and contract in an efficient manner;
- (2) Reduce prior approvals whenever possible and ensure accountability through auditing;
- (3) Generate and retain only necessary documentation;
- (4) Develop procedures that will allow OIT to use the most appropriate procurement methods and encourage innovation;
- (5) Allow OIT to work cooperatively with OUS institutions and other governmental units; and
- (6) Allow OIT to do business more easily with local and regional vendors.

Code of Ethics

- (1) The following Code of Ethics shall act as a guideline for employees to follow in contracting and purchasing.
 - (a) Give first consideration to the objectives and policies of OIT.
 - (b) Strive to obtain the maximum value for expenditures.
 - (c) Grant all competitive suppliers equal consideration insofar as state or federal statutes and institutional policies permit.
 - (d) Conduct business with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.
 - (e) Demand honesty in sales representation whether offered through the medium of an oral or written statement, an advertisement, or a sample of the product.
 - (f) Encourage all segments of society to participate by demonstrating support for emerging small, disadvantaged, and minority-owned and women-owned businesses and Qualified Rehabilitation Facilities.
 - (g) Consistent with the provisions of ORS 244, decline personal gifts or gratuities from any current or potential supplier of goods or services to OIT.
 - (h) Refrain from knowingly engaging in any outside matters of financial interest 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 OUS's Internal Management Directives.
 - (i) Receive written consent of originator of proprietary ideas and designs before using them for competitive purchasing purposes.

- (j) Foster fair, ethical, and legal trade practices.
- (2) The Code is for use only by OIT and creates no enforceable obligations for contractors, proposers, bidders or other parties doing business with OIT nor may it be used by contractors, proposers, bidders or other parties doing business with OIT who are challenging actions taken by OIT, its institutions, officers, employees, or agents.
 - (k) Purchase ENERGY STAR equipment for both single and mass purchasing actions whenever financially possible.

Delegation of Authority

- (1) As provided in OAR 580-040-210 OIT may develop and promulgate its own procedures by Administrative Rule for purchasing and contracting provided that such procedures ensure competitive practices. Procedures developed by the campuses must be approved by the OUS Vice Chancellor for Finance and Administration prior to adoption.
- (2) Notwithstanding section (1) of this rule, OIT shall be subject to:
 - (a) OAR 580-040-0223;
 - (b) OAR 580-040-0228;
 - (c) OAR 580-040-0290;
 - (d) OAR 580-040-0292; and
 - (e) OAR 580-040-0295.
- (3) The Oregon State Board of Higher Education delegates authority to the OIT president to develop guidelines and oversee practices regarding the purchasing and procurement of, and contracting for, goods and services consistent with these rules.
- (4) OAR 580-040-0223 to 580-040-0295 provide procedures to be used for purchasing and contracting except for:
 - (a) Contracts covered under the following Oregon Administrative Rules:
 - (A) OAR 580-040-0100 -- Screening and Selection for Personal Services Contracts; or
 - (B) OAR 580-050-0032 to 580-050-0042 -- Facilities contracting; or
 - (b) Where an OUS institution has adopted its own rules, consistent with OAR 580-040-0223 to 580-040-0295, to cover purchasing and contracting.

Definitions

The following definitions shall apply to all OIT Policy contained in this division unless the context requires otherwise:

- (1) "Bid": A competitive offer, which is binding on the bidder, in which price, delivery (or project completion) and conformance with specifications and the

requirements of the Invitation to Bid or other competitive bidding method will be the predominant award criteria.

- (2) "Bidder": A person or entity offering to supply goods or services to OIT in response to an Invitation to Bid or other competitive bidding method.
- (3) "Closing": The date and time announced in the solicitation (e.g., Invitation to Bid or Request for Proposals) as the deadline for submitting bids or proposals.
- (4) "Competitive Process": The process of procuring goods and services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that contracts are awarded equitably and economically using various factors in determining such equitability and economy.
- (5) "Competitive Quotes": The solicitation of offers from competing bidders. The solicitation may be accomplished by advertisement and/or by OIT initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.
- (6) "Contract": The written agreement, including OIT's solicitation document and the accepted portions of a bid or proposal, between OIT and the contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, OIT may use "contract" as meaning a purchase order, price agreement, or other contract document in addition to OIT's solicitation document and the accepted portions of a bid or proposal.
- (7) "Contract Price": The total of the awarded bid or proposal amount, including any approved alternates, and any fully executed change orders or amendments.
- (8) "Contractor": The individual, firm, corporation or entity awarded the contract to furnish OIT the goods, services, or work procured through a competitive process.
- (9) "Days": Calendar days, including weekdays, weekends and holidays, unless otherwise specified.
- (10) "Electronic Data Interchange (EDI)": The movement of electronic information from computer to computer. The electronic transfer of standard business transaction information between organizations in a structured application.
- (11) "Emergency": Not reasonably foreseeable circumstances that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.
- (12) "Emerging Small Business (ESB)": The meaning given in ORS 200.005(3) and (4).
- (13) "Facsimile": Electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document (e.g., facsimile bid), the term refers to a document (in the example given, a bid) that has been transmitted to and received by OIT via facsimile.

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- (14) "Invitation to Bid": The solicitation of competitive, written, signed, and sealed bids in which specification, price and delivery (or project completion) are the predominant award criteria.
- (15) "Minority Business Enterprise (MBE)": The meaning given in OAR 125-030-0000.
- (16) "Opening": The date, time and place announced in a solicitation for the public opening of written, sealed bids or proposals.
- (17) "OUS": Oregon University System.
- (18) "Price Agreement": A nonexclusive agreement in which the contractor agrees to provide specific items or services to OIT at a set price during a specified period of time.
- (19) "Proposal": A competitive offer, binding on the proposer and submitted in response to a Request for Proposals, where proposal evaluation and contract award are based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency and conformance with the specifications and requirements of the solicitation. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.
- (20) "Proposer": A person or entity who submits a proposal in response to a Request for Proposals.
- (21) "Qualified Vendor Listing": A list of vendors identified from a Request for Qualifications or Request for Information who are able to provide specific goods or services. Vendors on the list are not, however, under contract to provide those goods or services.
- (22) "Request for Information (RFI)": A written document soliciting information regarding products or services that OIT is interested in procuring. An RFI should describe the purpose of the procurement and the method to be used in evaluating the responses received.
- (23) "Request for Proposal (RFP)": The solicitation of written, competitive proposals or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.
- (24) "Request for Qualifications (RFQ)": A written document soliciting information regarding the qualifications of providers of services OIT is interested in procuring. An RFQ should describe the services that are needed and the method to be used in evaluating the responses received.

- (25) "Requirements Contract": An agreement in which a single contractor agrees to supply all of OIT's requirements for specific goods, equipment, or services that arise during a specified time period.
- (26) "Responsible Bidder or Proposer": Has the meaning given in OAR 580-040-0275.
- (27) "Responsive Bid or Proposal": Has the meaning given in OAR 580-040-0277.
- (28) "Retainer Agreement": An agreement by which, pursuant to a formal Request for Proposals or bid process, multiple contractors are authorized to provide specific supplies or equipment to or perform specific services for OIT in response to requests for price quotations.
- (29) "Single Seller": The only vendor of a particular product or service reasonably available. If OIT chooses to procure a particular product or service that is only available from one vendor, documentation must be maintained to support the determination that the product or service is available only from that one seller.
- (30) "Solicitation Document": An Invitation to Bid or Request for Proposals, which includes all documents, whether attached or incorporated by reference, utilized for soliciting bids or proposals.
- (31) "Women Business Enterprise (WBE)": The meaning given in OAR 125-030-0000.
- (32) "Work": The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire contract and the timely carrying out and completion of all duties and obligations imposed by a contract.

Designation of Purchasing Agents and Contract Officers

The institution president shall designate staff authorized to enter into purchasing and contracting agreements for the institution. Such staff, referred to as authorized personnel, shall be the only individuals who may procure supplies, equipment, and services and enter into contracts.

- (1) The chief administrative officer, or designee, of each institution shall keep a list, either by name or by title, of those designated authorized personnel along with a description of the types and amounts of procurements and contracts they are authorized to enter into.
- (2) Purchasing and contracting agreements issued by individuals not designated as authorized personnel shall be void.

- (3) Authorized personnel shall be responsible for ensuring that the proper procedures, as detailed in OAR 580-040-0223 to 580-040-0295, are followed for all institutional procurements. OIT may take appropriate action in response to expenditures authorized contrary to OAR 580-040-0223 to OAR 580-040-0295. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such expenditures.

Applicable Model Public Contract Rules

The following provisions of the Attorney General's Model Public Contract Rules shall be applicable to the bidding, awarding and administration of public contracts of OIT:

- (1) OAR 137-030-0010(5) -- Compliance and exceptions to terms and conditions of solicitation documents;
- (2) OAR 137-030-0012 -- Bids or Proposals Are Offers;
- (3) OAR 137-030-0030(2) and (3) -- Identification and Receipt of bids or proposals;
- (4) OAR 137-030-0050 -- Request for Change or Protest of Solicitation Specifications or Contract Provisions
- (5) OAR 137-030-0055 -- Addenda to Solicitation Documents;
- (6) OAR 137-030-0060 -- Pre-Opening Modification or Withdrawal of Bids or Proposals;
- (7) OAR 137-030-0065 -- Receipt, Opening, and Recording of Bids and Proposals;
- (8) OAR 137-030-0070 -- Late Bids and Proposals, Late Withdrawals, and Late Modifications;
- (9) OAR 137-030-0075 -- Mistakes in Bids or Proposals;
- (10) OAR 137-030-0080 -- Time for Acceptance;
- (11) OAR 137-030-0085 -- Extension of Time for Acceptance of Bid or Proposal;
- (12) OAR 137-030-0102 -- Rejection of all Bids or Proposals;
- (13) OAR 137-030-0104 -- Protest of Contractor Selection, Contract Award;
- (14) OAR 137-030-0115(1) -- Cancellation of invitations to bid or requests for proposals in the public interest;
- (15) OAR 137-030-0120 -- Disposition of Bids or Proposals if Solicitation Cancelled;
- (16) OAR 137-030-0130 -- Foreign Contractor, and;
- (17) OAR 137-030-0150 -- Right to Inspect Plant.

Processes for Procurement of Goods and Services

- (1) OIT shall establish several basic processes for the procurement of goods and services:
 - (a) Formal;
 - (b) Informal;
 - (c) Emergency;
 - (d) Single Seller;
 - (e) Intergovernmental;

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- (f) Procurement Cards;
 - (g) Price Agreements;
 - (h) Retainer Agreements;
 - (i) Requirements Contracts; and/or
 - (j) Qualified Vendor Listings.
- (2) For each of the processes used in the procurement of goods and services, authorized personnel shall retain documentation, either hard copy or electronic, supporting the process and the actions taken to fulfill the guidelines of that process consistent with the requirements of OAR 580-040-0295. Such documentation shall be subject to audit.
- (3) The formal procurement process shall be used, unless other exemptions apply, for all purchases of supplies, equipment and services where the estimated cost exceeds \$50,000.
- (a) Multiple contracts, purchase orders or purchasing requisitions shall not be issued separately with the intent to circumvent the formal purchasing process.
 - (b) The formal process may be accomplished in either of two ways the institution selects:
 - (A) Invitation to Bid -- The formal bid process will require that the invitation to bid be advertised in a manner that is likely to reach bidders. The advertisements shall include information regarding the goods or services to be purchased and the time schedule for the receipt of such goods or services. The contract under this process shall be awarded to the lowest responsive and responsible bidder who meets the specifications of the contract.
 - (B) Request for Proposal (RFP) -- The formal Request for Proposal process shall follow the same guidelines as the formal bid process except that the specifications and price will not necessarily be the predominant award criteria. Award criteria shall be detailed in the Request for Proposal.
- (4) The informal procurement process may be used for all purchases of supplies, equipment, and services where the estimated cost does not exceed \$50,000 and where OIT chooses not to follow the formal procurement process. The informal procurement process may also be used for any procurement regardless of the estimated cost if use of the informal procurement process will not interfere with competition among prospective contractors, reduce the quality of services, or increase costs.

- (a) The informal process may be accomplished through the solicitation of competitive quotes from at least three vendors. Solicitation may be accomplished by advertisement and/or by OIT initiating a request to vendors to make an offer. Written, oral, or electronic quotes may be solicited.
 - (b) When procuring goods or services through the solicitation process, information regarding vendors contacted, basis for selection, prices of various vendors and other information pertinent to the solicitation must be clearly documented. If three vendors are not reasonably available, the justification for soliciting fewer vendors shall be documented.
- (5) When procuring supplies, equipment and services through an emergency process, the designation of such emergency may only be authorized by an institution president or chief financial officer. The procurement process to be used will be at the discretion of authorized personnel, but must be documented. Such documentation must justify the use of such emergency process.
 - (6) When purchasing supplies, equipment and services from a single seller, institutions are not required to follow competitive procedures. Institutions shall, at the time of initial procurement, specify their intent, if any, to procure future upgrades or other compatible items through that vendor. Institutions shall document findings to support the determination that the product is available from only one seller.
 - (7) Regardless of dollar value, OIT may contract with, and purchase goods and services from, other State of Oregon agencies, local government units, federal government units, or any other governmental entity without the use of competitive procedures. However, contracts with other states and foreign governments must be approved by the Oregon Attorney General's office.
 - (8) Procurement cards, or other methods of direct purchasing, may be used for any purchase where the estimated cost does not exceed \$1,000.
 - (9) Following appropriate competitive procedures, OIT may enter into price agreements with vendors to provide specific items at a set price during a specified period of time. OIT may also purchase using State of Oregon or other governmental unit price agreements as authorized personnel deem appropriate without the use of competitive procedures.
 - (10) OIT may enter into retainer agreements with vendors using appropriate competitive procedures that take into account, at a minimum, the qualifications and reputation of the vendors, price structure, ability and willingness to respond to requests in a timely manner, location, and such other factors as authorized personnel deem appropriate.
 - (a) A Request for Proposals (RFP) or bid process shall be used in selecting vendors for specific retainer agreements.

- (b) Vendors may be selected to provide specific goods or services based on availability, responsiveness, quality, geographic location, track record, price, etc. Selection of vendors from the retainer agreement may be based on quotes or on the specific nature of the goods or services to be provided. The agent or officer should solicit prices from at least two vendors under the retainer agreement, or document the reason for not doing so.
 - (c) Authorized personnel shall maintain appropriate records of the competitive process used to select a vendor from the list of vendors with current retainer agreements in force at the time the selection is made.
- (11) Consistent with these rules, OIT may enter into requirements contracts to supply all of the institution's requirements for specific goods, equipment, or services that arise during a specified time period.
- (13) (a) Notwithstanding any of the procedures in this rule, OIT is authorized to develop alternative formal procurement methods that meet the following objectives:
- (A) Respond to innovative business and market methods; or
 - (B) Contribute to institution productivity improvement and process redesign; or
 - (C) Result in comprehensive cost-effectiveness and productivity for the institution.
- (b) Provide open consideration to more than one vendor using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, vendor experience and reliability, commitment to support regional business development and support for innovation.

Procurement of Telecommunications Equipment and Services

The procurement of telecommunications equipment and services shall be in accordance with the provisions of Oregon Laws 1995, Chapter 634, and any delegations or other agreements made between OIT and the Department of Administrative Services. These delegations and agreements shall include, but not be limited to, the following:

- (1) Implementation of Oregon Laws 1995, Chapter 634, will not impede cooperative efforts using local expertise and infrastructure to enhance local and regional economic development.
- (2) With regard to OIT, the following matters are exempt from the Department of Administrative Services' authority under Oregon Laws, Chapter 634:
 - (a) Broadcasting licensed by the Federal Communications Commission or its successor;
 - (b) Two-way radio systems operated as part of campus security;
 - (c) Local Area Networks except to the extent that they must be able to communicate with other networks outside OIT;

- (d) On-campus networks except for the replacement and/or major enhancement of the telephone system;
- (e) Contracts or grants for projects in which the contracting or granting entity requires use of a certain type of communication, equipment, or application;
- (f) Research into telecommunications that expands or extends knowledge rather than the commercial application of that knowledge; and
- (g) Development and offering of courses intended to be promulgated by electronic distance education technology, including the Internet.

Exemptions

- (1) OIT need not follow, regardless of value, competitive procedures for the following:
 - (a) Contracts for the provision of educational services.
 - (b) Single seller goods and services. When purchasing from a single seller, institutions shall document findings to support the determination that the product is available from only one seller.
 - (c) Brand-name goods and services or product prequalification. Institutions may specify brand name in the procurement of goods and services if that particular product or service has specific documentable attributes not found in other products. In addition, when specific design or performance specifications must be met for a product to be purchased, an institution may specify a list of qualified products by reference to the prequalified product(s) of particular manufacturers or sellers.
 - (d) Advertising and media services contracts.
 - (e) Price-regulated goods and services. Institutions may, regardless of dollar value, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.
 - (f) Purchases 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, OIT may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In addition, specific equipment that is expressly required under the terms of the contract and that is only available from one source is exempt from competitive procedures.
 - (g) Copyrighted materials. OIT may purchase copyrighted materials without competitive bid and regardless of dollar amount. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials and audio, visual and electronic media.

- (h) Investment contracts.
 - (i) Food contracts. This exemption shall apply exclusively to the procurement of food and food-related products.
 - (j) Periodicals, library books and library materials.
 - (k) Maintenance services for the useful life of goods. Institutions may purchase maintenance services for the useful life of goods directly from the vendor of those goods.
 - (l) Used personal property.
 - (m) Goods purchased for resale.
 - (n) Intercollegiate athletic programs. OIT may specify a product by brand name or make or the products of particular manufacturers or sellers when procuring equipment and supplies used in intercollegiate or interscholastic athletic programs.
 - (o) Media for athletic programs.
 - (p) Athletic contest agreements.
 - (q) Cadaveric organs.
 - (r) Hotel sites for large conferences and workshops.
 - (s) Dues, Registrations, and membership fees.
 - (t) Gasoline, diesel fuel, heating oil, lubricants, and asphalt.
 - (u) Equipment repair and overhaul.
 - (v) Goods and services purchased in foreign countries.
- (2) Exemptions from competitive procedures may be granted for a particular contract or contracts not otherwise exempted under these rules by the president or chief financial officer of the institution. Sufficient documentation must be retained regarding the need for such exemptions.

Basis for Awarding of Contracts

OIT shall award contracts based on various factors that shall be identified in the notice of contract. Such factors may include, but not be limited to, price; quality; life cycle costing; vendor experience and reliability; support for regional business development; support for productivity innovation; performance specifications; and timeliness.

Determination of Contractual Terms and Conditions

Except to the extent OIT has established mandatory contract provisions, OIT is authorized to determine the terms and conditions of solicitations and contracts, provided such terms and conditions are not contrary to statutory or regulatory requirements applicable to OIT.

Contract Amendments (Including Change Orders and Extra Work)

An amendment for additional work or product 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 competitive bidding provided that the amendment does not materially alter such a contract or that the increase in the value of the contract does not change the required method of procurement.

Pre-Bid and Pre-Proposal Conferences

- (1) Pre-bid or pre-proposal conferences may be scheduled. Each pre-bid and pre-proposal conference shall be described in the corresponding solicitation document as "voluntary" or "mandatory." If such a conference is designated as "mandatory," it shall be required for a bidder or proposer to attend in order to submit a bid or proposal for the corresponding contract.
- (2) The bidder or proposer may authorize a representative other than himself/herself to attend the pre-bid or pre-proposal conference.

Acceptance of Bids and Proposals by Facsimile or Electronic Data Interchange

OIT may determine if it is appropriate for bids and proposals to be accepted by facsimile or Electronic Data Interchange. OIT shall establish the conditions for solicitations, either individually or by type of solicitation. When OIT chooses to accept bids or proposals by facsimile, it shall follow the requirements outlined in OAR 137-030-0013(3). When OIT chooses to accept bids or proposals by Electronic Data Interchange, it shall follow the requirements outlined in OAR 137-030-0014(4).

Responsible Bidders; Responsibility Investigation

- (1) A "responsible bidder or proposer" is an individual, firm, corporation or entity who has the capability in all respects to perform fully the contract requirements, the integrity and reliability that will assure good faith performance, and who has not been disqualified by OUS or any of its institutions.
- (2) OIT has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible.

Responsive and Nonresponsive Bids or Proposals; Acceptance and Rejection

- (1) A "responsive bid or proposal" is one that complies in all material respects with an Invitation to Bid or Request for Proposals and with all prescribed bidding and proposal procedures and requirements. A "nonresponsive bid or proposal" is one that does not meet all material aspects of an Invitation to Bid or a Request for Proposal or that does not comply with all prescribed bidding and proposal procedures and requirements.
- (2) OIT shall accept, and consider for award, only those bids or proposals that are responsive as defined in this rule. Nonresponsive bids or proposals shall be rejected.

- (3) Nothing in this rule shall limit the ability of OIT to monitor contractor or vendor performance during the term of a contract.

Rejection of Individual Bids or Proposals

- (1) This rule applies to rejections, in whole or in part, of individual bids or proposals. OIT may reject, in whole or in part, any bid or proposal not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any bid or proposal upon a written finding by OIT that it is in the public interest to do so.
- (2) Reasons for rejecting a bid or proposal include but are not limited to finding that:
- (a) The bidder or proposer has not prequalified as required in the Invitation to Bid or Request for Proposal, or is disqualified under ORS 200.075, 279.037, or these rules; or
 - (b) The bidder or proposer has been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279.361; or
 - (c) The bid or proposal is nonresponsive, that is, it does not conform in all material respects to solicitation document requirements, including all prescribed public procurement procedures and requirements; or
 - (d) The supply, service or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the solicitation documents or permissible alternates or other acceptability criteria set forth in the solicitation documents; or
 - (e) The bidder or proposer is nonresponsible, i.e., is not capable of satisfying the terms and conditions of the public contract in a timely manner due to financial incapacity, inability to obtain bonding, loss of license, poor performance history or other objective cause; or
 - (f) The bidder or proposer within the last five years has 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; or
 - (g) The bidder or proposer has been determined responsible (i.e., adjudicated by a court, or as determined in writing by OIT in the case of a public contract) for more than one breach of a public or private contract or contracts in the last three calendar years before the scheduled date of the bid or proposal opening; or
 - (h) The bid or proposal security has not been submitted or properly executed as required by the solicitation documents; or

- (i) The bidder or proposer has not met the emerging small business, disadvantaged business, minority business and women business enterprise requirement, if any, established by OIT, and has not made a good faith effort in accordance with ORS 200.075 to comply with the requirements prior to the time bids or proposals are opened; or
 - (j) The bidder or proposer has failed to certify in accordance with OAR 580-040-0292(3); or
 - (k) Other circumstances of the particular bid or proposal, or bidder or proposer, indicate that acceptance of the bid or proposal would impair the integrity of the selection process or result in an imprudent contract by OIT.
- (3) For purposes of this rule, the business registry of bidders or proposers shall be subject to scrutiny, i.e., confirmation of ownership or identification of officers and directors, in order to identify previously disqualified bidders or proposers, and thus prevent any subterfuge, change of apparent ownership or other adjustments in formal appearance, to avoid application of this rule or of the disqualification provisions of ORS 279.037 to 279.045 and these rules.

Bidder or Proposer Disqualification

- (1) As used in this rule:
- (a) "Disqualification" means the debarment, exclusion or suspension of a person from the right to submit bids or proposals in response to OIT solicitations for a reasonable, specified period of time named in the order of disqualification. A contractor or vendor so debarred, excluded or suspended is disqualified.
 - (b) "Person" means an individual, partnership or corporation. Disqualification attaches to and follows the individual, so that an individual who is a partner in a partnership or an officer or principal in a corporation that is disqualified may not reform the business entity as a way of avoiding the disqualification.
- (2) The following are grounds for bidder or proposer disqualification:
- (a) The person does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;
 - (b) The person does not have equipment available to perform the contract;
 - (c) The person does not have key personnel available of sufficient experience to perform the contract; or
 - (d) The person has repeatedly breached contractual obligations to public and private contracting agencies.

- (3) As provided in ORS 200.075, the following are grounds for suspension of a bidder's, proposer's, contractor's, or subcontractor's right to bid, propose or participate in a public contract:
 - (a) If the person has entered into any agreement representing that a disadvantaged, minority, women or emerging small business enterprise, certified pursuant to ORS 200.055, will be performing or supplying materials under a public improvement contract without the knowledge and consent of the certified enterprise;
 - (b) If a person exercises management and decision-making control over the internal operations, as defined by ORS 200.075 (1)(b), of any subcontractor that is certified disadvantaged, minority, women, or emerging small business enterprise;
 - (c) If the person uses a disadvantaged, minority, women or emerging small business enterprise to perform contracting services or provide supplies under a public improvement contract to meet an established DBE/MBE/WBE/ESB goal, when the enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.
- (4) OIT may make such investigation as is necessary to determine whether there are grounds for disqualifying a person. If a bidder or proposer, or prospective bidder or proposer, fails to supply such information promptly as requested by OIT, such failure is grounds for disqualification.
- (5) Any information voluntarily submitted by a bidder or proposer, or prospective bidder or proposer, pursuant to an investigation under section (4) of this rule, or in a prequalification statement, or in a prequalification request submitted pursuant to these rules, shall be deemed a trade secret pursuant to ORS 192.501(2), if requested by the person submitting the information and verified to be a trade secret by OIT.
- (6) The bidder or proposer, or prospective bidder or proposer, will be notified in writing by personal service or certified mail of OIT's decision to disqualify the person from bidding or proposing with OIT. The notice shall contain:
 - (a) The effective date of the disqualification and the effective period of disqualification;
 - (b) The grounds for disqualification from bidding or proposing; and
 - (c) A statement of the person's appeal rights and applicable appeal deadlines.
- (7) If a person wishes to appeal OIT's decision to disqualify, the person must notify OIT, as appropriate, in writing within three business days after receipt of the notification

Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities

OIT shall purchase goods and services from Qualified Rehabilitation Facilities in accordance with the provisions of ORS 279.835 to 279.855 and applicable Administrative Rules.

Affirmative Action; General Policy

- (1) The general policy of OIT shall be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by offering the contracting and subcontracting opportunities available through OIT contracts. Notice of all contract and bid request solicitations using the formal process outlined in OAR 580-040-0225 shall be provided to the Advocate for Minority, Women and Emerging Small Business and the Oregon Department of Administrative Services for the Oregon Opportunity Register and Clearinghouse when any other solicitation is sent.
- (2) OIT shall not knowingly contract with or procure goods or services from any organization, business entity or individual that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation.
- (3) Bidders and proposers shall certify, as part of the bid or proposal documents accompanying the bid or proposal on a public contract, that such bidder or proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

Record Keeping Requirements

- (1) Documentation of all purchasing and contracting transactions will be made available for inspection by OUS Internal Audit Division upon request.
- (2) Authorized personnel shall maintain documentation, whether written or electronic, regarding all purchasing and contracting transactions.
 - (a) For purchases not exceeding \$1,000, only a vendor invoice must be retained.
 - (b) For purchases where the cost exceeds \$1,000 but does not exceed \$25,000, the following must be retained:
 - (A) The method of procurement;
 - (B) The names of firms/individuals and cost estimates considered;
 - (C) The basis for selection or awarding of contract;
 - (D) Other information pertinent to the solicitation; and
 - (E) Any other documentation required by these rules.
 - (c) For purchases where the estimated cost exceeds \$50,000, the following must be retained:
 - (A) The method of procurement;
 - (B) A copy of the announcement requesting bids or proposals;

- (C) The names of firms/individuals and cost estimates considered;
- (D) The basis for selection or awarding of contract;
- (E) A copy of the resulting contract and any subsequent amendments;
- (F) Other information pertinent to the solicitation; and
- (G) Any other documentation required by this rule.

Recommended by:
Administrative Council – April, 2009
President's Council – May 19, 2009

Signed: _____



Christopher G. Maples, President

Date: _____

August 13, 2010