

**WESTERN LANE FIRE AND EMS AUTHORITY
SIUSLAW VALLEY FIRE AND RESCUE
WESTERN LANE AMBULANCE DISTRICT
BOARD OF DIRECTORS**

“One Team, One Mission”

JOINT BOARD MEETING AGENDA

December 21, 2023, 6:00pm

2625 Highway 101 North, Florence

Zoom Meeting URL: <https://us02web.zoom.us/j/3737780337>

Or call 1-669-900-6833 and enter Meeting ID: 373 778 0337

- I. **6:00pm Call to Order & Pledge of Allegiance**
- II. **Roll Call / Establishment of Quorum**
- III. **Public Comment:** *This is the opportunity for the public to speak to the Board of Directors. The maximum time for public comment will be 30 minutes and three minutes will be allotted for each speaker.*
- IV. **Unit Citation:** October 28, 2023 ATV accident
- V. **Consent Agenda**
Meeting Minutes: Regular Meeting November 16, 2023
Staff Reports
Correspondence
- VI. **Call Volumes**
- VII. **Monthly Financials for SVFR, WLAD, WLFEA**
- VIII. **Old Business**
 - a. Job Descriptions from November 16, 2023
 - i. Social Media Specialist
 - ii. WLCR Team Member
 - b. Policies from November 16, 2023
 - i. 103 Oath of Office
 - ii. 111 Collective Bargaining
 - iii. 112 District Compliance with Local Budget Law
 - c. Policy 101.2.6 Director Code of Ethics
 - d. WLFEA Action Item: Resolution 2023-04 Amending Board Functionality, Officers and Meetings Policy 107 by Adding Language Referencing ORS 198.190

- e. WLAD Action Item: Resolution 2023-05 Adopting a Supplemental Budget
- f. WLFEA Action Item: Fire Suppression Agreement with David Myers, 9949 Big Creek Road
- g. Board Member Training

IX. New Business

- a. Job Descriptions for Review:
 - i. WLCR Client Advocate
 - ii. WLFEA Admin Assistant
 - iii. Firefighter/EMT
- b. Policies for Review:
 - i. 1027 Personal Appearance Standards
 - ii. 113 Internal Controls
 - iii. 114 Financial Management
- c. Public Contracting Rules

X. Director Comments

This is an opportunity for Directors to comment on topics not on the agenda.

XI. **Future Business**: Joint Board Meeting Thursday, January 25, 2023, at 6:00pm (note third Thursday due to Christmas)

XII. **Executive Session**: Per ORS 192.660(2)(d) to conduct deliberations with persons designated by the governing body to carry on labor negotiations.

XIII. **Executive Session**: Per ORS 192.660(2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions.

XIV. Adjournment

**Western Lane Ambulance District
Siuslaw Valley Fire and Rescue
Western Lane Fire and EMS Authority
2625 Highway 101 North, Florence, OR 97439**

Joint Board Meeting Minutes, November 16, 2023, 6:00 p.m.
The Zoom recording will be on the WLFEA Website

SVFR & WLFEA BOARD MEMBERS PRESENT:

Director Keith Stanton, Director David Carrillo, and Director Jim Palisi (via Zoom)

Not Present: Director Laurie Heppel and Director Tim Mendolia

WLAD & WLFEA BOARD MEMBERS PRESENT:

Director Mike Webb and Director Cindy Russell

Not Present: Director Vanessa Buss, Director Adam Holbrook, and Director Linda Stent

STAFF PRESENT:

Fire and EMS Chief Michael Schick, Deputy Chief Matt House, Office Manager Trish Lutgen, and Recording Secretary Holly Lais

Chief Schick called the meeting to order at 6:00 p.m. Roll Call established a quorum for SVFR Directors, but not for WLAD or WLFEA Directors.

PUBLIC COMMENT: None

SWEARING IN NEW FULL-TIME FIREFIGHTER, PARAMEDIC, AND ACADEMY RECRUITS:

Chief Schick swore in Jessica Marchinski and Nicholas Tustison.

CONSENT AGENDA:

- Meeting Minutes: Regular Meeting October 26, 2023
- Staff Reports
- Correspondence

CALL VOLUMES:

Deputy Chief Matt House reviewed the Call Volume statistics. He noted there had been an increase in call volume during October, but the year-to-date totals were down. There has been a decrease in the number of transports, and the MIH program is averaging 24-30 calls per month. The responders who were on the recent Structure Fires operated well and praises were given to all the crew members.

REVIEW OF FINANCIALS – WLAD, SVFR, WLFEA:

Office Manager Lutgen reported that the financials were tracking around 34% into the fiscal year. The System Design Reports for this month were not in the board packet due to the early meeting but will be in the next board packet. Tax revenue is starting to come in and will be reflected in next month's financials. The taxes will be deposited into the LGIP accounts to earn a higher interest rate beginning November 28, 2023.

OLD BUSINESS:

- a. The directors reviewed the job description from the last meeting. There were no changes.
- b. The directors reviewed the policies from the last meeting. There were no changes.

- c. WLFEA Action Item: Resolution 2023-04 Amending Board Functionality, Officers, and Meetings Policy 107 by Adding Language Referencing ORS 198.190:
Rescheduled to next month due to no quorum.
- d. WLAD Action Item: Resolution 2023-05 Adopting a Supplemental Budget:
Rescheduled to next month due to no quorum.
- e. WLFEA Action Item: Fire Suppression Agreement with David Myers, 9949 Big Creek Road:
Directors discussed the options available and viewed the partial site plan. They agreed that all future requests would have to be vetted by the boards. Further discussion and action rescheduled to next month due to no quorum.
- f. Board Member Training: Office Manager Lutgen informed the directors that she had talked to Shanta Carter from SDAO, and George Dunkel will be able to do an onsite training day in January. She will email the directors with a poll for available dates. The board would like to look at getting Jeff Griffin to teach a session in the middle of the year.

NEW BUSINESS:

- a. Job Descriptions: The Directors will review the Social Media Specialist and WLCR Team Member job descriptions at the December board meeting.
- b. Policies: The Directors will review policies 103 Oath of Office, 111 Collective Bargaining, and 112 District Compliance with Local Budget Law at the December board meeting.
- c. Policy 101.2.6 Director Code of Ethics: Director Stanton requested the board review and modify the policy. Chief Schick advised that the directors could approve modified policies at any time without the need to create a resolution. The timelines suggested would be rough to meet. If we needed to check with the attorney or research an issue, it could take more than the three days suggested in the email. The board decided to table the policy discussion until both boards have quorums.

DIRECTOR COMMENTS:

- Director Russell shared her experience at the Oregon Fire District Director Association (OFDDA) Conference. She enjoyed it and learned a lot.
- Director Stanton also attended the OFDDA conference. He brought back concerns regarding risk management when it comes to the Director's unintentionally holding public meetings.
- Director Palisi discussed email concerns. He advised Director Stanton not to freelance and to refrain from changing policy as he is new to the board and is still learning the ropes.
- Director Web shared he had listened to the coordination of the Shed Fire. The scene management over the radio was impressive.
- Chief Schick reminded everyone next month's meeting will be held a week early because of Christmas.

The meeting adjourned at 6:39 p.m.

FUTURE BUSINESS:

The next scheduled Joint Board Meeting is Thursday, December 21, 2023, at 6:00 p.m.

Respectfully submitted,
Holly Lais, Recording Secretary



Memorandum

To: WLFEA Board of Directors

From: Fire and EMS Chief Michael Schick

CC: Dina McClure, Trish Lutgen, Dep Chief House, Div. Chief Chance

RE: Chief's Board Report December 21st

1. Annexation discussion

We have not received any additional information concerning the property on Big Creek Rd. or from the properties on Ten Mile Creek Rd.

2. Interfacility transfer procedure

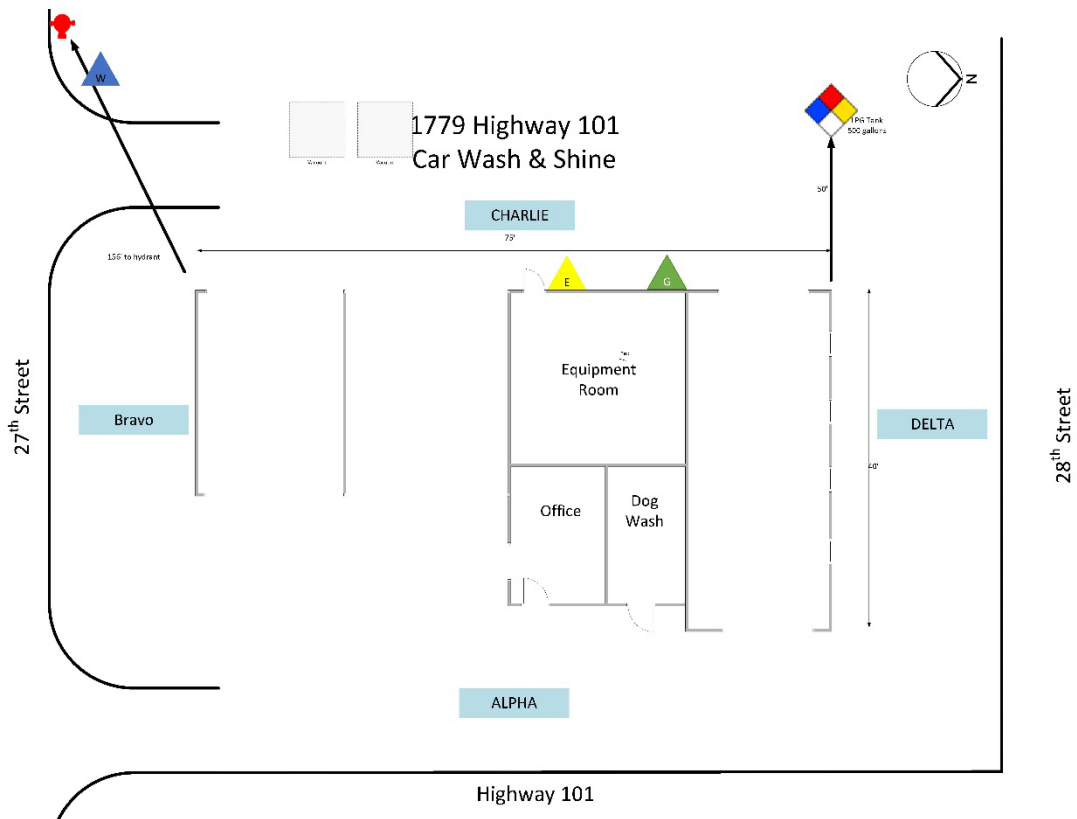
Working along with Peace Harbor personnel we have developed a new protocol for when we will be available to transfer patients from Peace Harbor Hospital to another facility. In the past we have been asked to drive patients to destinations as far away as Portland, sometimes in the middle of the night. We feel that this is a safety issue to have our personnel on the road for eight to nine hours straight, especially with no sleep. Consequently we proposed limitations on when we would accept an interfacility transfer request and when we wouldn't. Critical patients, as defined by Peace Harbor, will almost always be transported at any time as long as the destination is within, or very close to, Lane County. Non critical patients will only be transported during certain hours. The protocol was initiated on December 1st and seems to be working as planned. We will be forming an interagency group to review those calls which we feel may have been misclassified. As part of the procedure Peace Harbor has been given permission by us to request an ambulance from an alternative transporting agency if we decline a transfer.

3. Use of Station 1 for student program

The Looking Glass Community Services team has asked to use Station 1 for a few hours on a few different days in December. They plan on offering a safe place for students to come get food, water, and / or clothing if needed. The organization will have staff present to assist the students and I don't foresee much impact on the facility.

4. Preplan Development

A top priority of mine since I started in 2019 was to have detailed preplan documents for every commercial structure in our response area. A preplan will show the complete layout of the building, for example, where entrances are, photos of each side of the building, where hazardous materials may be present, where the nearest hydrant is located, where a key box is located and what to expect to find within the key box, and business information such as emergency contact information. Those few preplans we currently have are extremely outdated and are unreliable in the best cases.



5. Joint Labor Management Relations Committee

The only agenda topic for discussion this month is a request by the Union to modify how the Training Assistant position will be filled.

6. Structure Fire

WLFEA responded to a structure fire at a condominium complex located on 10th St. The fire was in a first-floor unit with fire damage primarily within the fire unit. The fire appears to have originated on the stove top in a pan of oil which was left unattended.





Western Lane Fire and EMS

"Stronger as one"

December 21, 2023

District Board Meeting

Prepared by: Deputy Chief Matt House

Key information:

1. Overall call volumes have been less than previous year-to-date totals. The acuity and significance of calls have as well been lesser than previous years-to-date. No major incidents to report from last month to this month.
2. Type-III engine is in the final stages of our internal processes to be placed into service, training, and last-minute equipment installs. Oregon State Fire Office Type VI engine is in process of being built with anticipation of delivery early next year. Still awaiting further notification on second Type VI engine, as they continue to have logistical issue receiving chassis.
3. Annual station inspections were conducted. Employees have been working diligently working on projects that required attention.
4. Station 7 did have front door damage due to an attempted break-in into the station. Nothing was stolen, just damage to the door.

1. Mobile Integrated Healthcare

Mobile Integrated Healthcare program has had a decreased from PeaceHealth in referrals. Wendy and I have been communicating with PeaceHealth on how to capture more patients from discharges and ER high utilizers.

2. Logistics report

EMS:

- i. Medic 611 is operational.
- ii. Medic 613 is operational.
- iii. Medic 612 is operational.
- iv. Medic 614 is operational.
- v. Medic 615 is operational.
- vi. Medic 617 is operational.

FIRE: See Operation Logistic report, here are some highlights:

- vii. Continuing annual heavy and lightweight apparatus inspections ongoing.
- viii. Miscellaneous repairs to fleet due to wear and tear of responses.
- ix. Annual apparatus inspections and service ongoing.
- x. Extrication tools annual inspection and service.



Western Lane Fire and EMS

“Stronger as one”

Call summary:

1. Call summary comparison for monthly and fiscal year.
 - a. Starting fiscal year 2023-2024, the reporting way of call volumes have been changed to reflect our total call volume for Western Lane Fire and EMS Authority.

WLFEA November 2023 Responses	2022	2023	Difference
911 Response, transports	161	167	6
Interfacility Transfers	36	49	13
Specialty Care Transfer	16	11	-5
911 Response, no patient transport	130	136	6
Mobile Integrated Healthcare Visits	34	28	-6
Fire	5	4	-1
Rescue / EMS	99	85	-14
Other (Service calls, good intent, false alarms)	28	22	-6
Overall call volume	509	502	-7
WLFEA responses through FY 2023-24	FY 22-23	FY 23-24	
911 Response, transports	840	795	-45
Interfacility Transfers	173	227	54
Specialty Care Transfer	83	80	-3
911 Response, no patient transport	664	627	-37
Mobile Integrated Healthcare	176	129	-47
Fire	44	61	17
Rescue / EMS	450	428	-22
Other (Service calls, good intent, false alarms)	143	186	43
Fiscal year total call volume comparison	2573	2533	-40

Mobile Integrated Healthcare

Reduced referrals from ED and the hospital have meant lower numbers for this month; my visits have been mostly blood draws for in-home Primary care and visits to a single patient who came home from a nursing facility right at the end of October.

Last year ED + Hosp = 18 visits. This year, ED + Hosp = 2 visits.

Also, even though inHome Primary Care has far fewer patients than Palliative Care had last year at this time (maybe a third?), the number of blood draw requests has doubled because there is no one else going to patient homes to draw blood except MIH. This has been possible in the short term because there have been fewer hospital/ED/Fall Assessment patients.

Last Month: 28 total visits, 13 working days, just over 2 pts/day. Given that I can generally fit 2 blood draws in a slot for one patient visit, that represents about 75% of MIH capacity (when doing my own scheduling) and about 50% capacity compared to when there was someone else making my scheduling calls.

For additional information, there were 5 total referrals from the hospital (4 additional to the one patient I saw), only 1 of these was for one of the key diagnoses identified for MIH (COPD, AFib, CHF, pneumonia). Of the 4 referrals I did not see, 2 declined saying they had plenty of support, one was admitted to Home Health Skilled Nursing, and one (the COPD) was discharged to Hospice.

Here is a summary of the visits by referral source:

Years		2023	
Visit date		Nov	
	Number of Visits	% of total Visits	
PCinHome	16	57%	
PCP	8	29%	
Self	2	7%	
DC	1	4%	
ED	1	4%	
Grand Total	28	100%	

And Last November for comparison:

Years		2022	
Visit date		Nov	
Referral	Visits	Percent	
DC	13	38.2%	
PAL	8	23.5%	
PCP	6	17.6%	
ED	5	14.7%	
Self	1	2.9%	
EMS	1	2.9%	
Grand Total	34	100.0%	

DC = Discharge Coord (hospital)

ED = Emergency Dept

EMS = EMS

PCinHome = Primary Care in Home

PAL = Palliative Care

Operations – Logistics

November

- Public Education and Community Outreach
 - Visited one local preschool twice
 - Station 1 tour for local home school group
 - Participated in Siuslaw Elementary School Kindergarten Parade
- District door lock programming and maintenance
- Finalized and implemented new fuel cards in conjunction with admin team, combining all apparatus from both SVFR and WLAD into WLFEA account.

Apparatus

- E-621: Cab lights replaced, EGR repair, thermostat replaced, Cummins update
- M-613: Windshield rock chip repair

Equipment

- Hydraulic Extrication tool pump leak repair

Facilities

- Station 1: New door lock installed on west stairwell entrance, front desk lobby glass removed. Main kitchen plumbing repair for dishwasher and refrigerator
- Station 2: Thermostat replaced in bedroom 4

Report submitted by:
Andy Gray
Logistics Captain



Western Lane Fire and EMS Authority

2625 Highway 101
Florence, OR 97439-9702
(541) 997-3212

Training Report December 2023

Target Solutions topics for the month are NFPA 1500 HazMat Transportation, NFPA 3000: Standard for Preparedness and Response to Active Shooter and/or Hostile Events, CAPCE Response to Mass Casualty Incidents, and CAPCE Spinal Cord Injuries.

The drill schedule for December is mass casualty and rescue task force training on 12/5 and 12/19 and task book sign-offs on 12/16. Swisshome-Deadwood Fire will be joining us on 12/19 to participate with MCI drill. Lt. Kozlowski and Tommy Supple have been working with their shift to develop standardized training for responses to MCIs/AVIs. We will be coordinating a larger, multi-agency MCI/AVI drill sometime in March. We are also planning a joint forcible entry training with Reedsport, Gardiner, Winchester Bay, and Lakeside on 1/22.

We have started training in the operating room at Peace Harbor Hospital. The crews have been checked off with anesthesia and are participating with airway management and sedation for scheduled procedures. We have been able to insert endotracheal tubes and laryngeal mask airways and assist with sedation and hemodynamic support. This process was initially started prior to Covid but was delayed. The experience and opportunity has been incredible.

The monthly training division meeting covered drill, simulator training, and the upcoming training plan for 2024. Tommy put together a comprehensive employee onboarding checklist, Mackenzie discussed the results of crew surveys, Sky updated the Master Qualification list, and we discussed B shift coordinating the first simulator training. Mackenzie is coordinating peer support training for a few employees next month.

WLFEA hosted the monthly Southwest Oregon Fire Instructors Association meeting on 12/4. We discussed new faces with DPSST and coordinating training resources to our area next year. Rob is coordinating bringing the class "Mastering Command and Control" to our area with possible help from the Jeff Common LODD Foundation.

Rob Jim Yeo had a meeting with Jones and Bartlett learning about course curriculum for HazMat Incident Command on 12/18. We are planning an upcoming course that will be instructed by Jim and Chief.

The monthly CPR class was cancelled after nobody showed up. Jim Yeo taught a class for Mapleton and Swisshome-Deadwood fire departments on 12/5 during one of their Tuesday night drills.

There are a couple of new DPSST certifications that were acquired in November. Chief Schick received his NFPA Fire Inspector I certification and Captain Mullins received his NFPA Apparatus Driver/Operator. Justin Mack passed his EMT class at LCC with a 4.0 GPA and is awaiting clearance for scheduling his national certification exam.



December 2023

Western Lane Crisis Response (WLCR) Manager's Board Report

Prepared by Melissa House, QMHA-I

General STATS for the month of

Total of **34** calls of those only **6** were phone contacts

Average amount of time spent per call: **2.0** hours

WLCR prevented **13** individuals from being arrested or seen the hospital

2 individuals were taken to Peace Harbor Hospital

The Justice Department requested WLCR **3** times and the Hospital Requested WLCR **3** times/Clinic **0**

7 Mental Health calls

3 Suicidal Ideations

6 Homelessness

4 Family Disputes

4 Youth

1 Veteran

3 Acute Trauma/Sudden Death

0 Drug/Alcohol

1 Structure Fire

0 Cancelled Enroute

10 Other calls

Melissa has been the programs full-time manager since mid-October and Camille has stepped down to a part-time Assistant manager.

Call volumes have been low since August due to the staffing shortage we have been experiencing a steady increase in calls since October and are working hard to increase those numbers further.

The WLCR team consists of **4** Part-Time Responders, **3** Full-Time Client Advocates, **1** Full-Time Youth Client Advocate, **1** Full-Time Outreach Coordinator, **1** Part-Time Assistant Manager and **1** Full Time Manager.

Our Responders take calls and provide interventions for individuals within the community.

The Client Advocates are mainly responsible for making sure follow-up with individuals we have seen happens within 72 hours. (Per OHA requirements). 2 of the Client Advocates have a start date of Jan. 1st 2024.



Our new Outreach Coordinator is Lewis. He will be working with Law Enforcement, EMS, and the Hospital to identify the top 10 most frequently seen and help get them established with resources and prevent reoccurring visits in the ER and with LE.

These positions fulfill the requirement of the 4-year SAMHSA grant which began on September 30th, 2023.

WLCR is actively recruiting for part-time responders to help ensure double coverage 24/7 365 days a year.

Budget:

Melissa has submitted the budget proposal for 2024 to Lane County. Within the budget proposal is a request to increase pay for part-time responders which will help the WLCR program with retention and sustainability.

Lane County Update

Lane County has been very supportive of Western Lane Crisis Response. They are looking to do what they can to help with our program's sustainability so they can use us as a model for two other rural Crisis Response programs within Lane county.

WLCR and Lane County to develop a better plan for Clinical Oversight and team trainings.

Grants Updates

Boys and Girls Club grant- Donna is doing a great job as our youth client advocate and has identified several gaps within the educational system and mental health/crisis support. She will be working with the school and community partners to shore up these gaps. Donna is also working with our new outreach Coordinator to provide more one on one support to youth in need. Both Donna and Lewis will be working on community engagement activities based around suicide intervention, mental health, and self-care.

SAMHSA Grant- WLCR is ahead of projected timeline for SAMHSA grant requirements. We have the staff to cover required positions, updated budget justification and narrative have been submitted along with the Disparities Impact report.

HRSA Grant- Kathy Smith and Melissa have been working on the planning grant to help build better relationships with community partners. Together, we have created a new process flow for how WLCR, LE, Hospital staff and LCBH work to assist adult individuals seen in the ER. Current plans for a Youth Process flow are being discussed. There will be a few more small meetings with partner agencies before bringing a large group together and developing/finalizing a strategic plan.

Update on the WLCR Association



WLFEA

Western Lane Crisis Response

2625 Highway 101 North
Florence, OR 97439-9702

(541) 997-3212

Western Lane Crisis Association received its determination letter from the IRS on December 4th. We are now officially a 501c3, tax-exempt, non-profit entity. A bank account has been opened, we completed two board trainings with attorney from the Center of Nonprofit Law and have our first strategic planning meeting schedule to see where we are going to go from here.

Interest in what the WLCR program is about:

We are trying to increase community awareness about what WLCR can offer. If the Board would like to learn more about our program, we would be happy to schedule a presentation.

Please let the WLCR program manager know of any clubs, groups, or events where we could share more about our team and support services and/or provide suicide prevention presentations.

Mental Health Mobile Crisis Response Program - Proposed Budget FY24 January 1, 2024 through December 31, 2024		
Personnel	Expenses	Explanation of cost / benefits
PMCR Program Coordinator	\$ 65,000.00	Salary
MCR Worker 1 FTE/Assistant program manager	\$ 22,920.00	\$22/hrx40hr wkx4wks x12months (Six 24 hours shifts a month \$50/shift) SAMSHA grant pays 50% of this position only, total position cost \$45,840)
Program manager and Assistant manager shift stipend	\$ 7,200.00	\$3,600 x 2 FTE position
MCR Worker 4 FTE shift stipend	\$ 14,000.00	\$3,600 x 4 FTE shift stipend (Six 24 hour shifts a month \$50/shift)
MCR PTE responder intervention time	\$ 69,120.00	PTE intervention wages (\$20/hr x 12-24 hours shifts x 12 PTE)
MCR PTE On-call time	\$ 41,472.00	PTE on-call wages (\$20/hr x 12-24 hours shifts x 12 PTE)
MCR PTE Responder		PTE no longer receive shift stipends
MCR Call Hourly		Moved to MCR PTE invention/on-call time
Total Wages	\$ 219,712.00	
MCR Benefits - PERS	\$ 48,841.98	0.5 benefits for asst. manager are paid out of the SAMHSA grant. Health and life insurance already reflect this change.
MCR Benefits - PERS IAP	\$ 13,182.72	
MCR payroll taxes	\$ 15,379.84	
MCR health insurance	\$ 14,184.00	
MCR Life Insurance	\$ 603.00	
MCR HRA VEBA	\$ 2,625.00	
Benefit total	\$ 94,816.54	
Total MCR Personnel	\$ 314,528.54	
Extra Expenses		
Recruiting / Retention /Training	\$ 19,800.00	Cost for hiring and training new team members and continuing education.
Contracted services	\$ 7,200.00	Kathy Smith 4 hours monthly at \$150 per hour for contract services to provide program support and assistance with managing grants.
Technology	\$ 5,855.16	Zoom annually \$149.90+ At&t monthly 65x3+ Imagetrend annually 4635.00+ Active911 \$13.15 x 14 annually + Microsoft Office 20.50*person. Adobe x 2 users ADP 18 users
Vehicle Insurance & Maintenance	\$ -	WLFEA in kind
Fuel	\$ 3,000.00	Estimated cost of fuel for responding to calls and assisting with transports to the metro area.
Travel, Mileage Reimbursement		Removed
Food/Lodging	\$ 500.00	Out of area training/meeting expenses
Education & Outreach	\$ 500.00	Cost for engaging in public awarness, hosting presentation, etc...
Resource Supplies	\$ 2,500.00	SOS support, resource brochures, laundry/shower vouchers, emergency supplies, bus vouchers.
Supplies (program support)	\$ 350.00	Cost other office supplies such as stamps, paper, and other other materials
Libability Insurance	\$ -	WLFEA in kind
Cell phone stipends	\$ 1,150.00	(50x1)+(25x13)12 Manager \$50 Assistant Manager \$25 and 12 PTE at \$25
Uniforms	\$ 2,500	Uniforms for all team members. (Jackets and T-shirts with WLCR logo) Jackets \$100 each. T-shirts \$50 for pack of 10)
TOTAL EXTRA EXPENSES	\$ 40,855.16	
Total MCR Personel andExtra Expense	\$ 355,383.70	
15% admin fee ,fiscal agent	\$ 53,307.55	5% increase due to expansion of program and increase in support needed from WLFEA.
Total	\$ 408,691.25	
Western Lane Ambulance	5,000.00	
Siuslaw Fire and Rescue	5,000.00	
City of Florence	5,000.00	
Projected Revenue FY 24	15,000.00	
FY 23 Lane County Requested Funding	393,691.25	Lane County Grant award given was \$374,944 for FY 23

Col's -

THANKS FOR YOUR
SPONSORSHIP +
EFFORTS IN SUPPORT
OF OUR PARADE
TO HONOR OUR
VETERANS!

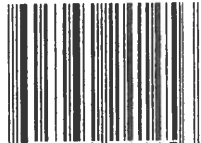
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american greetings



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WLFEA &
Siustaw Valley firefighters Assoc.

Thank you for the very
generous donation towards
the spaghetti lunch. It
brought forth many great
memories of the kitchen
training room.

Thank you for hosting
the beautiful celebration
of Greg's life. SVFR was a
huge part of it. Providing
man-power, space, & notice
on the board was so
appreciated.

Thank you!
Auda Steber
& family

Thanks
so
much!

Siuslaw Valley Fire and Rescue

Balance Sheet

As of November 30, 2023

	TOTAL	
	AS OF NOV 30, 2023	AS OF NOV 30, 2022 (PY)
ASSETS		
Current Assets		
Bank Accounts		
1001 Checking 1151	2,822.11	68,404.09
1002 Money Market 0832	30,584.00	1,897,054.12
1003 SVFR LGIP 6355	2,048,184.75	1,013,777.58
1013 Debit/Visa 2876	0.00	612.99
1050 PERS UAL 6512	151,007.55	150,241.69
1052 Capital Replace Savings 7216	499,337.13	396,296.63
1054 Capital Improve Savings 7224	461,800.81	45,757.75
Total Bank Accounts	\$3,193,736.35	\$3,572,144.85
Accounts Receivable	\$0.00	\$0.00
Other Current Assets		
1205 Undeposited Funds	0.00	48.85
1208 Employee Advances	0.00	0.00
1230 Other Receivables	0.00	0.00
1236 Prepaid Expense	0.00	19,281.50
1240 Property Tax Receivable	98,361.69	108,825.05
1245 Cash with County	7,242.00	7,242.00
1305 Prepaid Health Insurance	0.00	0.00
1320 Grant Receivables	0.00	0.00
1351 Conflag Receivable	0.00	0.00
Total Other Current Assets	\$105,603.69	\$135,397.40
Total Current Assets	\$3,299,340.04	\$3,707,542.25
Fixed Assets	\$0.00	\$0.00
TOTAL ASSETS	\$3,299,340.04	\$3,707,542.25
LIABILITIES AND EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable	\$0.00	\$228,622.97
Credit Cards	\$0.00	\$1,274.70
Other Current Liabilities		
2010 Other Payables	0.00	0.00
2050 Deferred Revenue	87,281.31	86,577.22
2100 Payroll Liabilities	0.00	0.00
Total Other Current Liabilities	\$87,281.31	\$86,577.22
Total Current Liabilities	\$87,281.31	\$316,474.89
Long-Term Liabilities	\$0.00	\$0.00
Total Liabilities	\$87,281.31	\$316,474.89
Equity		
3100 Capital Reserve	961,137.94	166,975.38
3200 Investment in Capital and Land	0.00	0.00

Siuslaw Valley Fire and Rescue

Balance Sheet

As of November 30, 2023

	TOTAL	
	AS OF NOV 30, 2023	AS OF NOV 30, 2022 (PY)
3500 Fund Balance Unrestricted	1,694,254.38	2,652,570.73
Net Income	556,666.41	571,521.25
Total Equity	\$3,212,058.73	\$3,391,067.36
TOTAL LIABILITIES AND EQUITY	\$3,299,340.04	\$3,707,542.25

Siuslaw Valley Fire and Rescue

Budget vs. Actuals: FY 23-24 - FY24 P&L

July - November, 2023

	TOTAL		
	ACTUAL	BUDGET	% OF BUDGET
Income			
4100 Property Tax			
4111 Lane County	2,005,509.83	3,046,205.00	65.84 %
4114 Douglas County	2,297.52	4,718.00	48.70 %
4117 Prior Year Tax Revenue	20,293.42	30,000.00	67.64 %
Total 4100 Property Tax	2,028,100.77	3,080,923.00	65.83 %
4125 Other County Tax Revenue	2,557.13		
4303 Three Rivers Casino	61,688.76	61,689.00	100.00 %
4800 Conflag Reimbursements		50,000.00	
4810 Other Fire Reimbursements	153.04		
4850 Other Income	15,000.00		
4859 Miscellaneous Income	260.00		
4860 Reimbursements and Refunds		15,000.00	
4890 Interest Income GF	13,363.99	12,000.00	111.37 %
4895 Interest Income - Capital 7216	1,490.35	1,000.00	149.04 %
4896 Interest Income - Capital 7224	1,625.50		
Total 4850 Other Income	31,739.84	28,000.00	113.36 %
Total Income	\$2,124,239.54	\$3,220,612.00	65.96 %
GROSS PROFIT	\$2,124,239.54	\$3,220,612.00	65.96 %
Expenses			
7000 Administration			
7100 Administrative Expense			
7108 Dues and Fees	153.09		
Total 7100 Administrative Expense	153.09		
7500 Insurance			
7510 Property & Liability Insurance		43,000.00	
Total 7500 Insurance		43,000.00	
Total 7000 Administration	153.09	43,000.00	0.36 %
8000 Capital Outlay			
8003 Portables/Pagers		45,000.00	
8012 Furniture		5,000.00	
8015 Command Vehicle		55,000.00	
8023 Type 6 Engine		100,000.00	
8024 Type 3 Engine	442,675.04	450,000.00	98.37 %
8025 Personal Safety		10,000.00	
8103 Computer Upgrades		5,000.00	
Total 8000 Capital Outlay	442,675.04	670,000.00	66.07 %
Total Expenses	\$442,828.13	\$713,000.00	62.11 %
NET OPERATING INCOME	\$1,681,411.41	\$2,507,612.00	67.05 %
Other Income			
9000 Beginning Balance - General Fund		1,640,422.00	

Siuslaw Valley Fire and Rescue

Budget vs. Actuals: FY 23-24 - FY24 P&L

July - November, 2023

		TOTAL	
	ACTUAL	BUDGET	% OF BUDGET
9310 Beginning Balance Capital Replacement Fund		497,356.00	
9320 Beginning Balance Capital Improvement Fund		459,696.00	
Total Other Income	\$0.00	\$2,597,474.00	0.00%
Other Expenses			
9501 Contingency		100,000.00	
9525 Transfer OUT to WLFEA	1,122,245.00	3,741,713.00	29.99 %
9530 Transfer OUT to WLCR	2,500.00	5,000.00	50.00 %
9555 Reserved for PERS UAL		150,321.00	
9760 Ending Balance Capital Replacement Fund		498,356.00	
9770 Ending Balance Capital Improvement Fund		459,696.00	
9900 Ending Balance - General Fund		150,000.00	
Total Other Expenses	\$1,124,745.00	\$5,105,086.00	22.03 %
NET OTHER INCOME	\$ -1,124,745.00	\$ -2,507,612.00	44.85 %
NET INCOME	\$556,666.41	\$0.00	0.00%

Siuslaw Valley Fire and Rescue

Transaction List by Date

November 2023

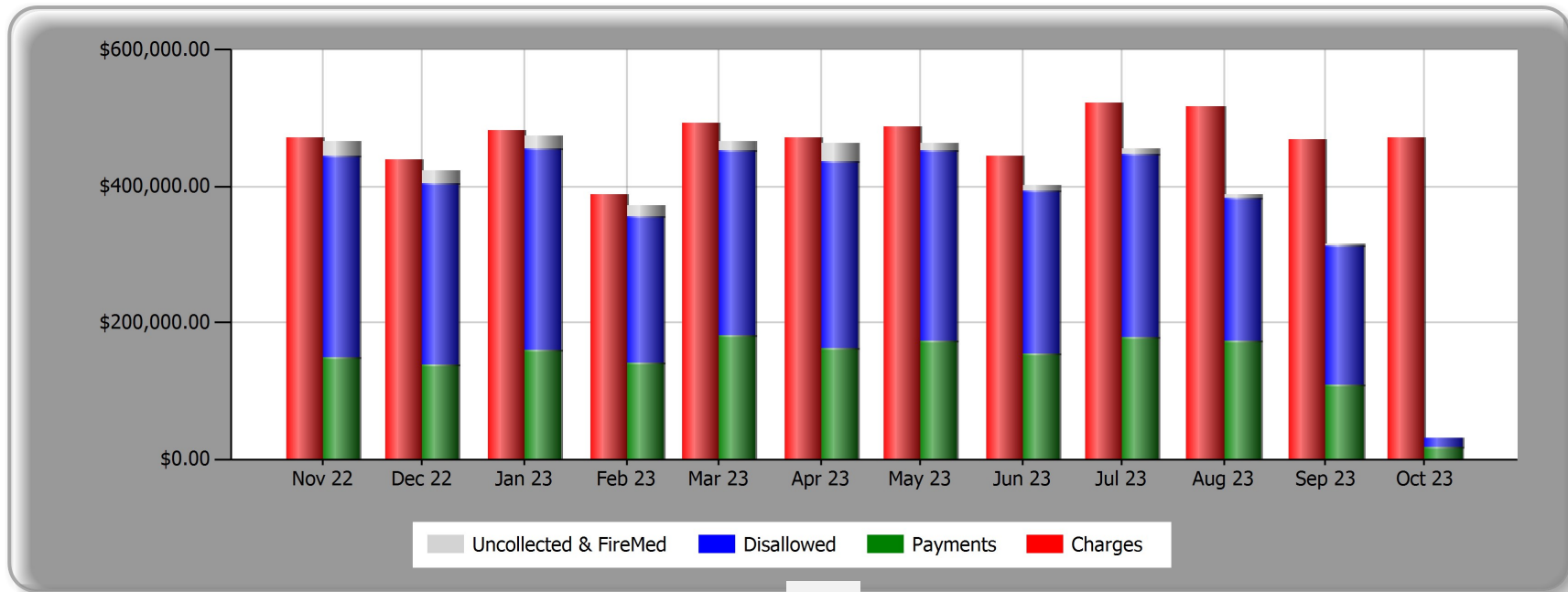
DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	AMOUNT
11/08/2023	Bill Payment (Check)	EFT	Western Lane Fire & EMS Authority (WLFEA)		1002 Money Market 0832	-2,500.00
11/21/2023	Bill Payment (Check)	EFT	Western Lane Fire & EMS Authority (WLFEA)		1002 Money Market 0832	-75,000.00
11/22/2023	Transfer			tax revenue to LGIP	1002 Money Market 0832	-547,000.00

**Western Lane Ambulance District
ANNUAL COLLECTION STATISTICS**

Date Of Service	11/1/2022
Date Of Service	10/31/2023
Invoices	0
Company	Western Lane Ambulance District

Month	Tickets	Charges	Payments	%	FireMed	%	Disallowed	%	Uncollected	%	Pending	%
Nov 22	212	471,341.52	-148,947.95	32 %	-11,843.17	3 %	-294,461.47	62 %	-9,924.73	2 %	6,164.20	1 %
Dec 22	206	437,905.12	-137,165.14	31 %	-8,907.73	2 %	-265,804.53	61 %	-12,111.81	3 %	13,915.91	3 %
Jan 23	215	482,971.76	-158,511.93	33 %	-9,594.50	2 %	-297,357.53	62 %	-7,261.40	2 %	10,246.40	2 %
Feb 23	184	388,519.76	-139,931.84	36 %	-6,594.52	2 %	-215,065.79	55 %	-10,526.10	3 %	16,401.51	4 %
Mar 23	225	492,193.92	-182,563.45	37 %	-5,947.38	1 %	-270,962.30	55 %	-7,395.50	2 %	25,325.29	5 %
Apr 23	209	472,320.24	-163,743.78	35 %	-7,125.00	2 %	-272,616.80	58 %	-18,672.63	4 %	10,162.03	2 %
May 23	218	486,122.40	-174,156.85	36 %	-4,322.90	1 %	-277,916.25	57 %	-8,162.37	2 %	21,564.03	4 %
Jun 23	212	445,007.64	-153,412.78	34 %	-8,270.56	2 %	-240,385.03	54 %	0.00	0 %	42,939.27	10 %
Jul 23	233	523,612.80	-179,934.65	34 %	-6,841.84	1 %	-267,161.81	51 %	0.00	0 %	69,674.50	13 %
Aug 23	224	515,944.92	-172,937.54	34 %	-4,875.00	1 %	-209,340.70	41 %	0.00	0 %	128,791.68	25 %
Sep 23	212	469,796.72	-109,591.43	23 %	-50.00	0 %	-204,593.21	44 %	0.00	0 %	155,562.08	33 %
Oct 23	206	471,176.00	-17,600.15	4 %	0.00	0 %	-12,339.72	3 %	0.00	0 %	441,236.13	94 %
		2,556	5,656,912.80	-1,738,497.49		-74,372.60	-2,828,005.14		-74,054.54		941,983.03	

All amounts shown relate directly to each month's charges. They will not reconcile to monthly deposit reports



**Western Lane Ambulance District
MONTH END SUMMARY**

Transaction Date	10/1/2023
Transaction Date	10/31/2023
Company Code	Western Lane Ambulance District

Balance Forward	1,172,194.87
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Charges by Level of Service	471,176.00
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Batch #	ALS 1 E	ALS 1 NE	ALS 2	BLS E	BLS NE	SCT	Total
OCT23	213,817.28	58,883.04	25,941.12	70,067.28	29,628.24	72,839.04	471,176.00
SEP23					0.00		0.00
Total	213,817.28	58,883.04	25,941.12	70,067.28	29,628.24	72,839.04	471,176.00

Payments - ALL	-167,708.02
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Payments - EFT

<u>Trans Date</u>	<u>Payer</u>	<u>Ref #</u>	<u>Amount</u>
10/1/2023	Pacific Source MedAdvantage	23274B1000017919	-497.76
10/1/2023	Pacific Source Community Solutions	23274B1000097423	-2,797.12
10/1/2023	Peace Health Hospice	40317	-450.00
10/2/2023	BCBS OR Blue Card MedAdv	0154833548	-681.14
10/2/2023	XO AARP Medicare Supplemental	9966196791	-262.51
10/2/2023	UHC West/Secure Horizons	9966450805	-373.56
10/2/2023	UHC West/Secure Horizons	9966453450	-1,699.72
10/3/2023	UHC West/Secure Horizons	1966825734	-2,619.79
10/3/2023	Medicare B Oregon	893903077	-2,367.07
10/4/2023	United Healthcare	1TZ60437606	-867.29
10/5/2023	XO Trillium Community Health Plan	0900169568	-163.66
10/5/2023	UHC West/Secure Horizons	1968014904	-733.18
10/5/2023	Medicare B Oregon	893910959	-1,364.69
10/5/2023	XO AARP Medicare Supplemental	9967821454	-636.81
10/5/2023	AARP Medicare Complete Plus	9968277584	-1,689.09
10/6/2023	XO ChampVA Office of Comm Care	01265421	-126.50
10/6/2023	XO Aetna Senior Supplemental	1106894330	-132.31
10/6/2023	VA Regional Payment Center	1215999	-1,760.92
10/8/2023	Pacific Source Community Solutions	23281B1000097181	-420.62

**Western Lane Ambulance District
MONTH END SUMMARY**

10/9/2023	BCBS OR Blue Card MedAdv	0154844824	-3,726.79
10/9/2023	XO Regence Federal Oregon	0261145054	-261.35
10/10/2023	VA Regional Payment Center	1489850	-2,374.56
10/10/2023	UHC West/Secure Horizons	1969445056	-1,162.84
10/11/2023	XO Blue Cross Blue Shield Oregon	0196313144	-258.15
10/11/2023	VA Regional Payment Center	1718456	-477.86
10/11/2023	UHC West/Secure Horizons	1970153140	-451.19
10/11/2023	XO Tricare for Life	2500032775	-258.15
10/11/2023	Oregon Medicaid	600153052	-154.12
10/12/2023	Trillium Community Health Plan	0900170464	-362.41
10/12/2023	UHC West/Secure Horizons	1970843375	-976.23
10/12/2023	XO Tricare for Life	2500158855	-132.31
10/12/2023	Aetna Medadvantage HMO	882328001053524	-1,672.93
10/12/2023	Medicare B Oregon	893928754	-4,122.30
10/12/2023	UHC West/Secure Horizons	9971176568	-1,040.37
10/13/2023	XO Tricare for Life	2500188874	-129.93
10/13/2023	Peace Health Hospice	41738	-450.00
10/15/2023	Pacific Source MedAdvantage	23288B1000018181	-1,491.75
10/15/2023	Pacific Source Community Solutions	23288B1000087890	-859.38
10/16/2023	BCBS OR Blue Card MedAdv	0154855359	-3,723.74
10/16/2023	XO Regence Federal Oregon	0261146662	-126.24
10/16/2023	AARP Medicare Complete Plus	1972435421	-804.06
10/16/2023	AARP Medicare Complete Plus	9972515025	-563.42
10/17/2023	VA Regional Payment Center	2824188	-3,823.92
10/17/2023	Aetna Medadvantage HMO	882328401081765	-1,017.69
10/18/2023	UHC West/Secure Horizons	1973668651	-290.26
10/18/2023	Medicare B Oregon	893946273	-5,401.48
10/19/2023	Trillium Community Health Plan	0900171373	-1,160.12
10/19/2023	UHC West/Secure Horizons	9974280523	-2,092.82
10/19/2023	XO AARP Medicare Supplemental	9974395897	-110.82
10/20/2023	Medicare B Oregon	893953697	-4,034.08
10/22/2023	Pacific Source MedAdvantage	23295B1000017447	-2,888.19
10/22/2023	Pacific Source Community Solutions	23295B1000099451	-4,287.87
10/23/2023	Blue Cross Blue Shield Oregon	0154865656	-2,656.23

**Western Lane Ambulance District
MONTH END SUMMARY**

10/23/2023	Regence Federal Oregon	0261150932	-4,062.48
10/23/2023	VA Regional Payment Center	3658309	-447.37
10/23/2023	Medicare B Oregon	893958380	-1,932.62
10/23/2023	UHC West/Secure Horizons	9975542040	-2,328.66
10/24/2023	BCBS OR Blue Card MedAdv	0154874065	-269.16
10/24/2023	Oregon Medicaid	600157195	-3,238.75
10/24/2023	Medicare B Oregon	893962476	-2,556.85
10/25/2023	XO Tricare for Life	2500462944	-109.24
10/25/2023	VA Regional Payment Center	4131738	-4,953.92
10/25/2023	UHC West/Secure Horizons	976660398	-424.02
10/26/2023	Trillium Community Health Plan	0900172298	-109.20
10/26/2023	Umpqua Health Alliance	125166	-360.00
10/26/2023	AARP Medicare Complete Plus	91163953	-272.14
10/26/2023	UMR	C144623089763433;	-933.35
10/27/2023	XO Tricare for Life	2500504436	-129.93
10/27/2023	Peace Health Hospice	42235	-450.00
10/27/2023	Medicare B Oregon	893974538	-9,704.11
10/27/2023	XO AARP Medicare Supplemental	9977795279	-212.32
10/29/2023	Pacific Source Community Solutions	23302B1000096028	-1,615.06
10/30/2023	Blue Cross Blue Shield Oregon	0154879168	-8,155.47
10/30/2023	Medicare B Oregon	893979111	-7,298.47
10/30/2023	UHC West/Secure Horizons	91171117	-2,706.99
10/31/2023	UHC West/Secure Horizons	P6614858	-833.70

EFT TOTAL			-126,091.11
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Payments - Credit Card

(VISA, MC, AMX, Disc)

<u>Trans Date</u>	<u>Amount</u>
10/2/2023	-200.00
10/4/2023	-50.00
10/5/2023	-375.00
10/8/2023	-25.00
10/10/2023	-25.00
10/12/2023	-250.00
10/13/2023	-150.00

**Western Lane Ambulance District
MONTH END SUMMARY**

10/16/2023	-25.00
10/19/2023	-359.96
10/25/2023	-25.00
10/26/2023	-250.00
10/27/2023	-500.00
10/30/2023	-50.00

CREDIT CARD TOTAL -2,284.96

Payments - Bank Deposit *(Cash, Chk Ins, Chk Pvt, Coll Pmt, MO)*

<u>Trans Date</u>	<u>Amount</u>
10/3/2023	-8,253.98
10/10/2023	-7,157.75
10/17/2023	-8,413.18
10/24/2023	-4,387.41
10/31/2023	-13,043.15

BANK DEPOSIT TOTAL -41,255.47

Payments - Paid at FD

<u>Date</u>	<u>Pd at FD, Ins</u>	<u>Total</u>
10/26/2023	-137.06	-137.06
Total	-137.06	-137.06

Payments - Refunds/Refund Reversals

<u>Date</u>	<u>Ref Ins</u>	<u>Ref Prv</u>	<u>Total</u>
10/5/2023		141.98	141.98
10/10/2023	1,918.60		1,918.60
Total	1,918.60	141.98	2,060.58

Payments by Level of Service

<u>Date</u>	<u>ALS 1 E</u>	<u>ALS 1 NE</u>	<u>ALS 2</u>	<u>BLS E</u>	<u>BLS NE</u>	<u>SCT</u>	<u>Total</u>
10/1/2023	-2,054.53		-592.40		-1,097.95		-3,744.88
10/2/2023	-1,517.21			0.00		-1,699.72	-3,216.93
10/3/2023	-6,713.70	-100.00	-191.92	-2,015.91	-189.37	-4,029.94	-13,240.84

**Western Lane Ambulance District
MONTH END SUMMARY**

Date	ALS 1 E	ALS 1 NE	ALS 2	BLS E	BLS NE	SCT	Total
10/4/2023	-917.29				0.00		-917.29
10/5/2023	-2,992.83			-1,579.22	-163.66	-84.74	-4,820.45
10/6/2023	-2,019.73						-2,019.73
10/8/2023	-420.62		0.00		-25.00		-445.62
10/9/2023	-3,863.06			-125.08			-3,988.14
10/10/2023	-4,651.35	-4,686.38		1,466.62	-930.44		-8,801.55
10/11/2023	-1,599.47	0.00					-1,599.47
10/12/2023	-2,965.36	-2,892.08			-1,338.64	-1,360.47	-8,556.55
10/13/2023	-279.93			-450.00			-729.93
10/15/2023	-1,250.33	-319.12		-781.68			-2,351.13
10/16/2023	-3,195.83					-2,046.63	-5,242.46
10/17/2023	-7,449.94	-1,017.69			-700.92	-4,086.24	-13,254.79
10/18/2023	-1,008.31	-828.85		-290.26		-3,564.32	-5,691.74
10/19/2023	-780.58	-2,092.82		-850.32			-3,723.72
10/20/2023	-2,040.44			-866.73	-280.43	-846.48	-4,034.08
10/22/2023	-5,251.37		-625.69	-281.20	-1,017.80		-7,176.06
10/23/2023	-4,482.54	-1,040.37	-1,288.29	-282.57	-271.11	-4,062.48	-11,427.36
10/24/2023	-2,656.72	-2,962.52		-1,326.43	-341.49	-3,165.01	-10,452.17
10/25/2023	-2,220.74			-109.24	-3,182.20		-5,512.18
10/26/2023	-1,741.03	-360.00		39.28			-2,061.75
10/27/2023	-3,712.58	-1,043.24		-1,297.01	-450.00	-4,493.53	-10,996.36
10/29/2023	-420.62	-355.50	-527.52	-311.42			-1,615.06
10/30/2023	-10,710.36		-715.05	-6,785.52			-18,210.93
10/31/2023	-9,005.16	-1,046.02		-1,829.46	-294.16	-1,702.05	-13,876.85
Total	-85,921.63	-18,744.59	-3,940.87	-17,676.15	-10,283.17	-31,141.61	-167,708.02

Transaction Adjustments by Level of Service

-305,991.98

	ALS 1 E	ALS 1 NE	ALS 2	BLS E	BLS NE	SCT	Total
Fire Med Adjustment	-9,679.98	-525.00		-825.00		-250.00	-11,279.98
Uncollectible	-1,610.08		-1,318.20	-3,521.20	-874.20	-697.63	-8,021.31
W/O Fee Schedule	-131,963.20	-37,973.85	-8,265.23	-34,136.44	-21,647.46	-34,321.82	-268,308.00
W/O to collections	-11,506.43		1,318.20	1,762.44	874.20	-8,065.57	-15,617.16

**Western Lane Ambulance District
MONTH END SUMMARY**

	ALS 1 E	ALS 1 NE	ALS 2	BLS E	BLS NE	SCT	Total
Waiver per FD	-250.00		-181.89		-1,985.00	-348.64	-2,765.53
Total	-155,009.69	-38,498.85	-8,447.12	-36,720.20	-23,632.46	-43,683.66	-305,991.98

Ending Balance							1,169,670.87
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Western Lane Ambulance District

Balance Sheet Comparison

As of November 30, 2023

	TOTAL	
	AS OF NOV 30, 2023	AS OF NOV 30, 2022 (PY)
ASSETS		
Current Assets		
Bank Accounts		
1010 Checking 0046	36,459.73	95,268.83
1020 Money Market 9835	124,392.46	1,629,571.96
1030 LifeMed Cash 9411	55,018.66	53,875.12
1040 WLAD LGIP 6353	1,422,978.05	1,520,666.38
1050 PERS UAL 6407	59,378.27	59,204.65
1090 Capital Equip Reserve 1060	193,065.20	501,482.16
1099 Petty Cash	400.00	400.00
Total Bank Accounts	\$1,891,692.37	\$3,860,469.10
Accounts Receivable		
1200 Accounts Receivable	-855.68	2,413.32
Total Accounts Receivable	\$ -855.68	\$2,413.32
Other Current Assets		
1201 Patient Accounts Receivable	1,185,897.39	1,135,607.75
1202 Allowance for Bad Debt	-174,032.96	-160,957.64
1203 Allowance for Contractual Adjust	-462,499.98	-442,887.02
1204 Grant Receivable	0.46	42,054.46
1205 Accounts Receivable (Audit)	6,311.00	6,311.00
1240 Property Tax Receivable	66,336.00	66,336.00
1245 Cash with County	3,391.00	3,391.00
1250 Seismic Grant Receivable	0.00	0.00
1260 MIH Grant Receivable	0.00	0.00
1299 Undeposited Funds	0.00	0.00
1302 Prepaid LifeMed Expense	0.00	0.00
1304 Prepaid Prop & Liab Insurance	12,774.49	45,022.49
1305 Prepaid Health Insurance	0.00	0.00
1306 Prepaid Other Expense	0.00	0.00
1313 Employee Draws	0.00	0.00
1335 Flexible Medical Spending	0.00	849.97
Total Other Current Assets	\$638,177.40	\$695,728.01
Total Current Assets	\$2,529,014.09	\$4,558,610.43
Fixed Assets	\$0.00	\$1,268,916.89
TOTAL ASSETS	\$2,529,014.09	\$5,827,527.32
LIABILITIES AND EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable		
2000 Accounts Payable	676.17	330,264.07
Total Accounts Payable	\$676.17	\$330,264.07
Credit Cards	\$0.00	\$7,561.22

Western Lane Ambulance District

Balance Sheet Comparison

As of November 30, 2023

	TOTAL	
	AS OF NOV 30, 2023	AS OF NOV 30, 2022 (PY)
Other Current Liabilities		
2001 Accrued Account Payable	0.00	0.00
2006 Deferred Casino Revenue	0.00	0.00
2050 MIH Deferred Revenue	53,277.00	53,277.00
2100 Wages & Payroll Liabilities	0.00	135,005.17
2200 Deferred LifeMed Income	0.00	0.00
Total Other Current Liabilities	\$53,277.00	\$188,282.17
Total Current Liabilities	\$53,953.17	\$526,107.46
Total Liabilities	\$53,953.17	\$526,107.46
Equity		
3010 Investment in Capital and Land	134,135.92	1,268,916.89
3020 LifeMed Fund Balance	55,018.66	53,936.20
3030 Capital Reserve	193,065.20	501,482.16
3100 Designated for Capital	0.00	0.00
3500 Fund Balance Unrestricted	3,040,025.95	3,854,885.58
Net Income	-947,184.81	-377,800.97
Total Equity	\$2,475,060.92	\$5,301,419.86
TOTAL LIABILITIES AND EQUITY	\$2,529,014.09	\$5,827,527.32

Western Lane Ambulance District

Budget vs. Actuals: FY 23-24

July - November, 2023

		TOTAL	
	ACTUAL	BUDGET	% OF BUDGET
Income			
4000 Operating Income			
4001 Private Insurance	227,499.52	500,000.00	45.50 %
4002 Private Pay	53,300.29	120,000.00	44.42 %
4020 Medicaid	93,469.62	200,000.00	46.73 %
4023 Medicare	545,180.06	1,180,000.00	46.20 %
4025 GEMT CCO Program	76,474.38	65,000.00	117.65 %
4026 GEMT FFC Program	2,308.00		
4035 Collection Agency	210.78		
4085 Other Revenue	30.07		
4090 less Refunds	-3,748.61		
4099 Allowance for Contractual Adjustment	37,383.38		
Total 4000 Operating Income	1,032,107.49	2,065,000.00	49.98 %
4200 NonOperating Income			
4210 Property Tax Revenue			
4211 Current Year - Permanent Levy	490,260.18	731,823.00	66.99 %
4212 Current Year - Local Option Levy	677,025.96	1,052,768.00	64.31 %
4214 Prior Year Taxes	11,969.21	25,000.00	47.88 %
Total 4210 Property Tax Revenue	1,179,255.35	1,809,591.00	65.17 %
4220 Three Rivers Casino	30,792.00	30,792.00	100.00 %
4230 Other County Tax Revenue	920.35		
4250 Reimbursements	3,422.27		
4280 Miscellaneous Revenue		15,000.00	
4290 Interest Income WLAD	20,591.83	30,000.00	68.64 %
4295 Interest Income Capital	679.58	800.00	84.95 %
Total 4200 NonOperating Income	1,235,661.38	1,886,183.00	65.51 %
4600 LifeMed Income			
4601 LifeMed Subscriptions	19,325.00	120,000.00	16.10 %
4602 LifeMed CPR Classes	6,804.62	14,000.00	48.60 %
4609 LifeMed Interest	14.71		
4690 less LifeMed Refund	-20.00		
Total 4600 LifeMed Income	26,124.33	134,000.00	19.50 %
4700 Grant Income			
4702 MIH Foundation		50,000.00	
Total 4700 Grant Income		50,000.00	
Total Income	\$2,293,893.20	\$4,135,183.00	55.47 %
GROSS PROFIT	\$2,293,893.20	\$4,135,183.00	55.47 %
Expenses			
5000 PERSONNEL SERVICES			
5100 Operations Personal Services			
5123 PERS Operations	194.07		
Total 5100 Operations Personal Services	194.07		

Western Lane Ambulance District

Budget vs. Actuals: FY 23-24

July - November, 2023

	TOTAL		
	ACTUAL	BUDGET	% OF BUDGET
Total 5000 PERSONNEL SERVICES	194.07		
6900 LifeMed Expense			
6951 Public & Regional Training LM		5,000.00	
6952 QRT Support & Training LM		10,000.00	
6953 Promotion & Advertising LM	3,107.71	7,000.00	44.40 %
6957 Bank Fees LM	1,159.20	1,500.00	77.28 %
6958 Postage & Printing LM	1.98	4,000.00	0.05 %
6959 Supplies LM	2,010.10	1,500.00	134.01 %
6960 Other LifeMed Expenses		1,000.00	
Total 6900 LifeMed Expense	6,278.99	30,000.00	20.93 %
7000 MATERIALS & SERVICES ADMINISTRATION			
7100 Administrative Expense			
7108 Dues and Fees	125.00		
7111 GEMT FFC Fees	476.17		
Total 7100 Administrative Expense	601.17		
Total 7000 MATERIALS & SERVICES ADMINISTRATION	601.17		
8000 Capital Outlay			
8010 Building Improvements		50,000.00	
8017 Computer Upgrade / iPads		5,000.00	
8020 Hands Free CPR Devices		18,000.00	
8023 Personal Safety		5,000.00	
8026 Portables/Pagers		45,000.00	
8027 Ventilators		60,000.00	
Total 8000 Capital Outlay		183,000.00	
8700 Grant Expense			
8705 Three Rivers Casino Carseat Grant	939.78		
Total 8700 Grant Expense	939.78		
Total Expenses	\$8,014.01	\$213,000.00	3.76 %
NET OPERATING INCOME	\$2,285,879.19	\$3,922,183.00	58.28 %
Other Income			
9100 Beginning Balance - General Fund		2,903,811.00	
9200 Beginning Balance - LifeMed		130,000.00	
9300 Beginning Balance - Capital Fund		192,200.00	
9410 To Gen Fund from LifeMed	110,000.00	110,000.00	100.00 %
9420 To Equip Resv from Gen Fund		310,000.00	
Total Other Income	\$110,000.00	\$3,646,011.00	3.02 %
Other Expenses			
9011 IF Transfer - Capital Reserve		310,000.00	
9012 From LifeMed to Gen Fund	110,000.00	110,000.00	100.00 %
9501 Contingency		100,000.00	
9530 Transfer OUT to WLCR	2,500.00	5,000.00	50.00 %
9535 Transfer OUT to WLFEA	3,230,564.00	6,206,973.00	52.05 %

Western Lane Ambulance District

Budget vs. Actuals: FY 23-24

July - November, 2023

	TOTAL		
	ACTUAL	BUDGET	% OF BUDGET
9555 Reserved for PERS UAL Account		59,221.00	
9700 Reserved for Capital Expenditures		503,000.00	
9800 Ending Balance - LifeMed		124,000.00	
9900 Ending Balance - General Fund		150,000.00	
Total Other Expenses	\$3,343,064.00	\$7,568,194.00	44.17 %
NET OTHER INCOME	\$ -3,233,064.00	\$ -3,922,183.00	82.43 %
NET INCOME	\$ -947,184.81	\$0.00	0.00%

Western Lane Ambulance District

Transaction List by Date

November 2023

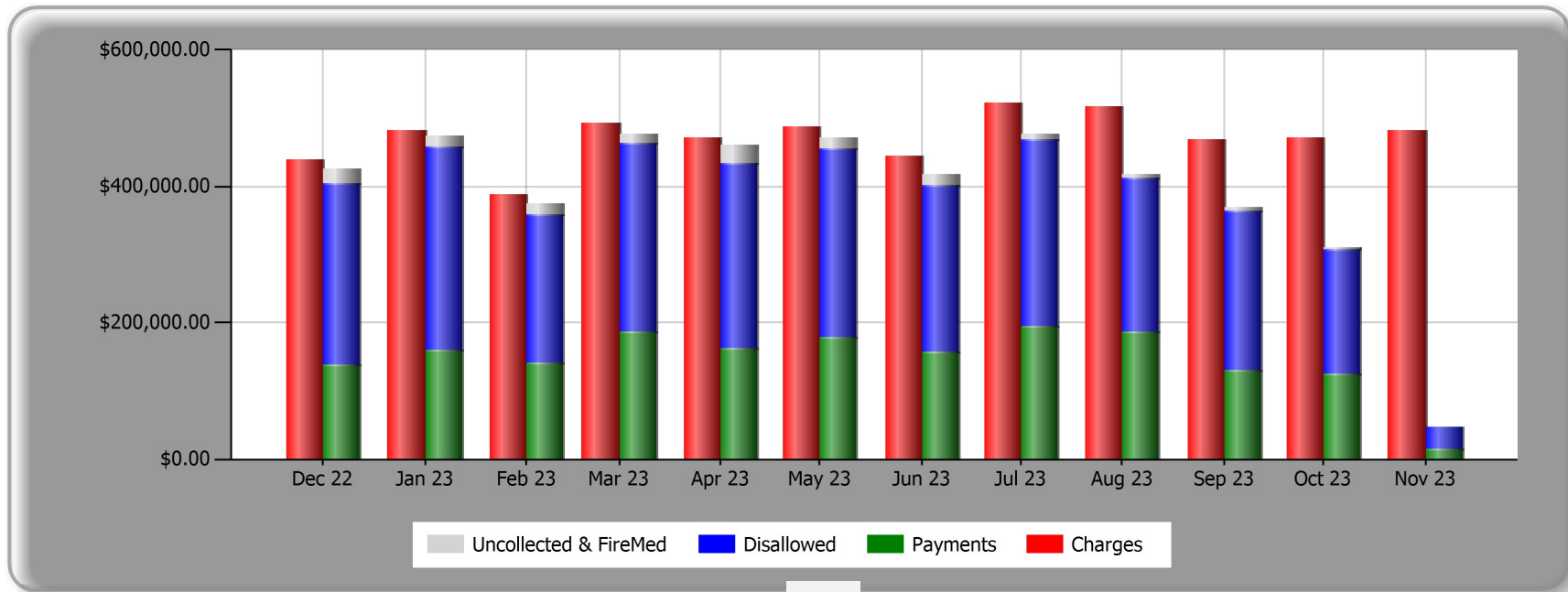
DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	AMOUNT
11/01/2023	Bill Payment (Check)	4148	Siuslaw Consulting, LLC		1030 LifeMed Cash 9411	-200.00
11/01/2023	Transfer			Confirmation #3823212	1020 Money Market 9835	-60,000.00
11/02/2023	Check	SVCCHRG		Service Charge	1030 LifeMed Cash 9411	-114.00
11/07/2023	Transfer			Confirmation #3827255	1010 Checking 0046	-32,000.00
11/08/2023	Bill Payment (Check)	EFT	Western Lane Fire & EMS Authority		1020 Money Market 9835	-2,500.00
11/14/2023	Check	EFT	KRAMER, D #1237	CC Online Refund #1237, KRAMER, D	1030 LifeMed Cash 9411	-65.00
11/21/2023	Bill Payment (Check)	EFT	Western Lane Fire & EMS Authority		1020 Money Market 9835	-75,000.00
11/22/2023	Transfer			tax revenue to LGIP	1020 Money Market 9835	-410,000.00
11/29/2023	Check	EFT	PERS	PERS invoices for previous calendar year corrections (2019 Pebley)	1010 Checking 0046	-12.82
11/30/2023	Check	SVCCHRG		Service Charge	1010 Checking 0046	-25.00

**Western Lane Ambulance District
ANNUAL COLLECTION STATISTICS**

Date Of Service	12/1/2022
Date Of Service	11/30/2023
Invoices	0
Company	Western Lane Ambulance District

Month	Tickets	Charges	Payments	%	FireMed	%	Disallowed	%	Uncollected	%	Pending	%
Dec 22	206	437,905.12	-137,165.14	31 %	-8,907.73	2 %	-265,804.53	61 %	-12,730.29	3 %	13,297.43	3 %
Jan 23	215	482,971.76	-160,028.95	33 %	-9,594.50	2 %	-297,357.53	62 %	-7,978.68	2 %	8,012.10	2 %
Feb 23	184	388,519.76	-140,752.65	36 %	-6,594.52	2 %	-216,589.82	56 %	-11,959.44	3 %	12,623.33	3 %
Mar 23	225	492,193.92	-187,577.42	38 %	-5,947.38	1 %	-274,979.85	56 %	-7,795.50	2 %	15,893.77	3 %
Apr 23	209	472,320.24	-163,551.25	35 %	-7,125.00	2 %	-271,233.30	57 %	-18,907.63	4 %	11,503.06	2 %
May 23	218	486,122.40	-177,962.56	37 %	-4,322.90	1 %	-277,843.50	57 %	-10,804.06	2 %	15,189.38	3 %
Jun 23	212	445,007.64	-156,145.78	35 %	-8,270.56	2 %	-244,107.09	55 %	-9,211.92	2 %	27,272.29	6 %
Jul 23	233	523,612.80	-193,451.18	37 %	-8,778.27	2 %	-274,973.76	53 %	0.00	0 %	46,409.59	9 %
Aug 23	224	515,944.92	-187,002.83	36 %	-5,975.00	1 %	-225,619.17	44 %	0.00	0 %	97,347.92	19 %
Sep 23	212	469,796.72	-130,321.75	28 %	-4,734.61	1 %	-233,843.53	50 %	0.00	0 %	100,896.83	21 %
Oct 23	206	471,176.00	-125,833.73	27 %	-275.00	0 %	-184,190.33	39 %	0.00	0 %	160,876.94	34 %
Nov 23	226	481,072.12	-15,344.36	3 %	0.00	0 %	-31,641.38	7 %	0.00	0 %	434,086.38	90 %
		2,570	5,666,643.40	-1,775,137.60		-70,525.47	-2,798,183.79		-79,387.52		943,409.02	

All amounts shown relate directly to each month's charges. They will not reconcile to monthly deposit reports



**Western Lane Ambulance District
MONTH END SUMMARY**

Transaction Date	11/1/2023
Transaction Date	11/30/2023
Company Code	Western Lane Ambulance District

Balance Forward	1,169,670.87
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Charges by Level of Service	481,072.12
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Batch #	ALS 1 E	ALS 1 NE	ALS 2	BLS E	BLS NE	SCT	TNT	Total
AUG23				0.00				0.00
NOV23	256,793.68	47,067.40	24,013.28	88,890.40	22,344.08	41,063.28	900.00	481,072.12
SEP23	0.00				0.00			0.00
Total	256,793.68	47,067.40	24,013.28	88,890.40	22,344.08	41,063.28	900.00	481,072.12

Payments - ALL	-197,921.43
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Payments - EFT

<u>Trans Date</u>	<u>Payer</u>	<u>Ref #</u>	<u>Amount</u>
11/1/2023	THOMSEN, HAYDEN C	72112276	0.00
11/1/2023	UMR	CI44620078	-1,492.02
11/2/2023	Trillium Community Health Plan	0900173233	-379.08
11/2/2023	XO AARP Medicare Supplemental	9980074367	-71.54
11/2/2023	UMR	CI44630128485673:	-1,360.37
11/2/2023	UHC West/Secure Horizons	P6782581	-841.58
11/3/2023	XO MODA	23307B1000115783	-265.94
11/3/2023	XO Tricare for Life	2500653639	-132.31
11/3/2023	MCGILL, BRITTANY N	72227637	0.00
11/3/2023	XO AARP Medicare Supplemental	9980669096	-216.20
11/6/2023	Blue Cross Blue Shield Oregon	0154893770	-2,556.03
11/6/2023	XO Regence Federal Oregon	0261154561	-617.77
11/6/2023	Medicare B Oregon	893998703	-1,199.85
11/6/2023	AARP Medicare Complete Plus	P6902862	-2,743.60
11/7/2023	VA Regional Payment Center	1234153	-1,349.43
11/7/2023	Oregon Medicaid	600161483	-311.42
11/7/2023	XO AARP Medicare Supplemental	9981652250	-215.94
11/8/2023	VA Regional Payment Center	1372258	-4,990.64

**Western Lane Ambulance District
MONTH END SUMMARY**

11/8/2023	Tricare for Life	2500762163	-250.00
11/8/2023	XO AARP Medicare Supplemental	9982571202	-180.43
11/9/2023	VA Regional Payment Center	1588671	-3,193.00
11/9/2023	UMR	CI44606081131423;	-1,359.83
11/9/2023	UHC West/Secure Horizons	P7136240	-5,140.32
11/10/2023	UHC West/Secure Horizons	P7197275	-4,497.54
11/12/2023	Pacific Source Community Solutions	23316B1000100096	-2,124.29
11/13/2023	BCBS OR Blue Card MedAdv	0154904348	-3,457.51
11/13/2023	Medicare B Oregon	894017059	-699.15
11/13/2023	XO AARP Medicare Supplemental	9984561784	-887.89
11/14/2023	Oregon Medicaid	600163580	-3,190.77
11/15/2023	All Care Health Plan-Medicaid	123000220072414	-212.77
11/15/2023	VA Regional Payment Center	2260627	-3,733.84
11/15/2023	UHC West/Secure Horizons	91208946	-394.25
11/15/2023	XO AARP Medicare Supplemental	9985610694	-111.35
11/16/2023	Trillium Community Health Plan	0900175097	-732.70
11/16/2023	VA Regional Payment Center	2514168	-486.72
11/16/2023	Medicare B Oregon	894029129	-6,478.11
11/16/2023	AARP Medicare Complete Plus	91214344	-2,000.69
11/17/2023	OPTUM Care	2094684830	-662.03
11/17/2023	VA Regional Payment Center	2617779	-486.72
11/19/2023	Pacific Source Community Solutions	23323B1000092984	-4,619.77
11/19/2023	Pacific Source Health Plan	23323B1000179798	0.00
11/20/2023	BCBS OR Blue Card MedAdv	0154911178	-348.47
11/20/2023	XO Regence Federal	0261159684	-131.52
11/20/2023	Intercommunity Health Network	27232409	-2,813.63
11/20/2023	VA Regional Payment Center	2740975	-4,966.88
11/20/2023	Medicare B Oregon	894038259	-4,423.93
11/20/2023	AARP Medicare Complete Plus	91222018	-948.97
11/21/2023	VA Regional Payment Center	2964605	-4,045.20
11/21/2023	Oregon Medicaid	600165684	-5,694.61
11/21/2023	XO AARP Medicare Supplemental	9988288731	-106.86
11/22/2023	Trillium Community Health Plan	0900175970	-1,717.26
11/22/2023	OPTUM Care	2101215386	-938.00

**Western Lane Ambulance District
MONTH END SUMMARY**

11/24/2023	XO MODA	23328B1000107014	-253.17
11/24/2023	ChampVA Office of Comm Care	7414I720199	0.00
11/26/2023	Pacific Source MedAdvantage	23330B1000015165	-1,947.96
11/26/2023	Pacific Source Community Solutions	23330B1000085205	-588.09
11/27/2023	OPTUM Care	2105145253	-686.34
11/27/2023	VA Regional Payment Center	3539616	-3,201.64
11/27/2023	Railroad Medicare	816900931	-532.10
11/27/2023	Medicare B Oregon	894052943	-13,018.39
11/27/2023	XO AARP Medicare Supplemental	9989935680	-178.35
11/27/2023	UMR	CI44620088554243:	-1,603.20
11/28/2023	ChampVA Office of Comm Care	03782543	-250.00
11/28/2023	ChampVA Office of Comm Care	03782544	-535.75
11/28/2023	MODA MedAdvantage	23332B1000001958	-1,407.65
11/28/2023	Samaritan Advantage	27367798	-1,452.99
11/28/2023	AARP Medicare Complete Plus	91233773	-2,176.64
11/28/2023	UHC West/Secure Horizons	Q0377550	-1,699.73
11/29/2023	Blue Cross Blue Shield Oregon	0154926326	-6,927.88
11/29/2023	BCBS OR Blue Card MedAdv	0154930411	-2,727.76
11/29/2023	Regence Federal Oregon	0261161731	-3,367.17
11/29/2023	XO Tricare for Life	2501162027	-1,369.52
11/29/2023	Medicare B Oregon	894061718	-16,893.15
11/30/2023	Railroad Medicare	816934810	-532.10
11/30/2023	Medicare B Oregon	894065982	-260.77
11/30/2023	UHC West/Secure Horizons	91244485	-2,361.49
11/30/2023	UMR	CI44627089913763:	-1,594.03
11/30/2023	AARP Medicare Complete Plus	Q0494432	-1,190.56
EFT TOTAL			-156,535.16

Payments - Credit Card

(VISA, MC, AMX, Disc)

<u>Trans Date</u>	<u>Amount</u>
11/1/2023	-50.00
11/3/2023	-85.00
11/5/2023	-25.00
11/7/2023	-350.00

**Western Lane Ambulance District
MONTH END SUMMARY**

11/8/2023	-25.00
11/13/2023	-25.00
11/14/2023	-2,777.32
11/15/2023	-242.20
11/16/2023	-275.00
11/20/2023	-4,381.92
11/21/2023	-1,046.90
11/22/2023	-275.00
11/25/2023	-25.00
11/26/2023	-864.29
11/29/2023	-564.92

CREDIT CARD TOTAL	-11,012.55
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Payments - Bank Deposit *(Cash, Chk Ins, Chk Pvt, Coll Pmt, MO)*

<u>Trans Date</u>	<u>Amount</u>
11/7/2023	-15,409.14
11/14/2023	-5,835.56
11/21/2023	-5,029.96
11/28/2023	-3,962.26

BANK DEPOSIT TOTAL	-30,236.92
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Payments - Paid at FD

<u>Date</u>	<u>Pd at FD, Ins</u>	<u>Total</u>
11/8/2023	-136.80	-136.80
Total	-136.80	-136.80

Payments by Level of Service

<u>Date</u>	<u>ALS 1 E</u>	<u>ALS 1 NE</u>	<u>ALS 2</u>	<u>BLS E</u>	<u>BLS NE</u>	<u>SCT</u>	<u>Total</u>
11/1/2023	-1,542.02				0.00		-1,542.02
11/2/2023	-841.58	-1,360.37		-379.08	-71.54		-2,652.57
11/3/2023	-398.25			-85.00		-216.20	-699.45
11/5/2023	-25.00						-25.00
11/6/2023	-4,134.34	-211.44		-535.77	-780.97	-1,454.73	-7,117.25
11/7/2023	-6,643.51	-100.00	-3,798.00	-1,212.99	-540.05	-5,341.38	-17,635.93

**Western Lane Ambulance District
MONTH END SUMMARY**

Date	ALS 1 E	ALS 1 NE	ALS 2	BLS E	BLS NE	SCT	Total
11/8/2023	-2,158.52	-3,218.92		-180.43	-25.00		-5,582.87
11/9/2023	-1,670.22	-3,193.00		-1,359.83	-320.80	-3,149.30	-9,693.15
11/10/2023	-1,307.96	0.00			-273.21	-2,916.37	-4,497.54
11/12/2023	785.13		0.00	-311.42		-2,598.00	-2,124.29
11/13/2023	-460.21	-2,346.79		0.00	0.00	-2,262.55	-5,069.55
11/14/2023	-4,917.84	-25.00	-1,283.35	-2,646.79	-96.67	-2,834.00	-11,803.65
11/15/2023	-4,370.29			-111.35		-212.77	-4,694.41
11/16/2023	-2,987.71	-1,197.95	-2,827.55	-1,250.42	-1,709.59		-9,973.22
11/17/2023	-662.03				-486.72		-1,148.75
11/19/2023	-1,261.86				-759.91	-2,598.00	-4,619.77
11/20/2023	-3,368.16	-4,904.81	-275.00	-2,208.74	-363.06	-6,895.55	-18,015.32
11/21/2023	-4,580.00	-40.00	-851.48	-743.35	-25.00	-9,683.70	-15,923.53
11/22/2023	-1,633.62	-282.37	-1,014.27	0.00	0.00		-2,930.26
11/24/2023	-143.93			-109.24	0.00		-253.17
11/25/2023	-25.00						-25.00
11/26/2023	-1,278.89	-361.12		-307.34		-1,452.99	-3,400.34
11/27/2023	-7,998.76	-2,040.96	-686.34	-2,567.24	-3,201.64	-2,725.08	-19,220.02
11/28/2023	-3,039.11	-1,153.39	-618.48		-449.23	-6,224.81	-11,485.02
11/29/2023	-20,658.35	-4,995.84	-727.48	-1,669.61	-1,170.64	-2,628.48	-31,850.40
11/30/2023	-3,276.51	-1,052.45		-536.11	-260.77	-813.11	-5,938.95
Total	-78,598.54	-26,484.41	-12,081.95	-16,214.71	-10,534.80	-54,007.02	-197,921.43

Transaction Adjustments by Level of Service	-266,924.17
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	ALS 1 E	ALS 1 NE	ALS 2	BLS E	BLS NE	SCT	Total
Financial Assist/Charity					-255.03		-255.03
Fire Med Adjustment	-4,234.61	-1,411.43	-550.00	-1,550.00		-250.00	-7,996.04
Uncollectible	-2,092.14			-1,758.76		-500.00	-4,350.90
W/O Fee Schedule	-95,399.62	-42,577.49	-13,050.64	-34,677.92	-16,644.31	-41,186.17	-243,536.15
W/O to collections	-2,736.39	-2,183.34	-2,080.60	-3,760.72	-275.00	250.00	-10,786.05
Total	-104,462.76	-46,172.26	-15,681.24	-41,747.40	-17,174.34	-41,686.17	-266,924.17

Ending Balance	1,185,897.39
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Western Lane Fire and EMS Authority

Balance Sheet Comparison

As of November 30, 2023

	TOTAL	
	AS OF NOV 30, 2023	AS OF NOV 30, 2022 (PY)
ASSETS		
Current Assets		
Bank Accounts		
1001 Checking 5400	74,616.70	556,241.86
1003 WLFEA LGIP 6553	1,909,207.24	
Total Bank Accounts	\$1,983,823.94	\$556,241.86
Accounts Receivable		
1200 Accounts Receivable	815,877.99	27,229.66
Total Accounts Receivable	\$815,877.99	\$27,229.66
Other Current Assets		
1299 Undeposited Funds	2,500.00	0.00
1304 Prepaid Expenses	0.00	0.00
1305 Prepaid Insurance	116,963.53	-2,592.88
1335 PSA Flex Account	302.00	-69.34
1400 Deferred Outflows of Resources	1,496,516.99	291,494.99
Total Other Current Assets	\$1,616,282.52	\$288,832.77
Total Current Assets	\$4,415,984.45	\$872,304.29
Fixed Assets		
1700 Capital Assets		
1708 Vehicles	76,395.65	43,942.00
1799 Accumulated Depreciation	-7,765.00	-7,765.00
Total 1700 Capital Assets	68,630.65	36,177.00
Total Fixed Assets	\$68,630.65	\$36,177.00
TOTAL ASSETS	\$4,484,615.10	\$908,481.29
LIABILITIES AND EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable		
2000 Accounts Payable	49,190.48	7,445.67
Total Accounts Payable	\$49,190.48	\$7,445.67
Credit Cards		
2007 TIB Mastercard	11,241.15	5,446.00

Western Lane Fire and EMS Authority

Balance Sheet Comparison

As of November 30, 2023

	TOTAL	
	AS OF NOV 30, 2023	AS OF NOV 30, 2022 (PY)
Total Credit Cards	\$11,241.15	\$5,446.00
Other Current Liabilities		
2100 Payroll Liabilities		
2110 PERS Payable	-59.50	
2115 OSGP Payable	2,904.58	2,029.58
2116 VALIC Payable	975.00	1,025.00
2117 AFLAC Payable	1,713.03	1,875.84
2118 VOYA Payable	6,000.00	7,620.00
2120 PLO Payable	18.35	
2995 Clearing Account	456,047.12	378,018.21
Total 2100 Payroll Liabilities	467,598.58	390,568.63
2125 SVFR Association Dues	52.00	44.00
2130 IAFF Union Dues	3,404.41	2,988.72
2135 IAFF PAC Contributions	87.50	83.00
2700 Deferred Inflows	194,273.00	
Total Other Current Liabilities	\$665,415.49	\$393,684.35
Total Current Liabilities	\$725,847.12	\$406,576.02
Total Liabilities	\$725,847.12	\$406,576.02
Equity		
3200 Investment in Capital	12,150.00	12,150.00
3201 Retained Earnings	2,036,643.66	550,500.82
Net Income	1,709,974.32	-60,745.55
Total Equity	\$3,758,767.98	\$501,905.27
TOTAL LIABILITIES AND EQUITY	\$4,484,615.10	\$908,481.29

Western Lane Fire and EMS Authority

Budget vs. Actuals: FY 23-24 - FY24 P&L

July - November, 2023

	TOTAL		
	ACTUAL	BUDGET	% OF BUDGET
Income			
4100 Transfers			
4101 Transfer from SVFR for Administration	1,359,443.50	3,784,713.00	35.92 %
4102 Transfers from WLAD for Administration	3,467,762.50	6,206,973.00	55.87 %
4103 Transfer from SVFR for Fire Program	121,191.70		
4104 Transfers from WLAD for EMS Program	193,340.63		
Total 4100 Transfers	5,141,738.33	9,991,686.00	51.46 %
4400 Miscellaneous Income			
4410 Donations	793.00		
4415 Employee Recognition Donation	300.00		
4420 Interest	22,218.95		
Total 4400 Miscellaneous Income	23,311.95		
4700 Western Lane Crisis Response			
4701 WLCR Program Lane County	98,742.94	187,472.00	52.67 %
4702 WLCR Program Other Income	7,500.00	7,500.00	100.00 %
4704 HRSA Grant		100,000.00	
4705 BGCWLC Grant	12,919.82	83,333.00	15.50 %
4706 SAMHSA Grant		422,705.00	
4707 WLC Foundation Grant	9,313.00	9,313.00	100.00 %
Total 4700 Western Lane Crisis Response	128,475.76	810,323.00	15.85 %
4860 Reimbursements and Refunds	11,047.48		
Total Income	\$5,304,573.52	\$10,802,009.00	49.11 %
GROSS PROFIT	\$5,304,573.52	\$10,802,009.00	49.11 %
Expenses			
5000 Personnel Services			
5320 WLCR Wages & Benefits	79,805.79	165,061.00	48.35 %
5340 HRSA Grant Wages		14,976.00	
5350 BGWLC Grant Wages	18,680.31	65,112.00	28.69 %
5360 SAMHSA Grant Wages	7,350.87	285,946.00	2.57 %
5400 WLFEA Payroll Taxes and Benefits	1,054,021.21	2,415,255.00	43.64 %
5500 WLFEA Wages & Salaries	1,611,068.60	3,749,748.00	42.96 %
Total 5000 Personnel Services	2,770,926.78	6,696,098.00	41.38 %
6000 Operations			
6100 Training	11,970.73	80,195.00	14.93 %
6200 Medical	61,890.97	117,800.00	52.54 %
6300 Reserve Expenses	227.51	2,000.00	11.38 %
6400 Emergency Services	128,163.50	168,000.00	76.29 %
6500 Prevention	14,712.51	16,225.00	90.68 %
6600 Recruitment	8,161.98	6,500.00	125.57 %
6700 Facilities	57,133.55	203,123.00	28.13 %
6800 Vehicles	117,597.66	215,000.00	54.70 %
6900 Operational Supplies	47,631.79	172,000.00	27.69 %

Western Lane Fire and EMS Authority

Budget vs. Actuals: FY 23-24 - FY24 P&L

July - November, 2023

	TOTAL		
	ACTUAL	BUDGET	% OF BUDGET
Total 6000 Operations	447,490.20	980,843.00	45.62 %
7000 Materials & Services			
7100 Administrative Expenses	88,484.72	127,000.00	69.67 %
7200 Technology	35,141.42	76,500.00	45.94 %
7300 Board of Directors	15,488.45	23,500.00	65.91 %
7400 Professional Services	62,892.30	131,750.00	47.74 %
7500 Insurance	141,307.12	150,000.00	94.20 %
8700 WLCR Program	26,640.44	279,228.00	9.54 %
Total 7000 Materials & Services	369,954.45	787,978.00	46.95 %
8000 Capital Outlay			
8003 WLCR Vehicle 2	6,227.52		
Total 8000 Capital Outlay	6,227.52		
Bank Charges & Fees	0.25		
Total Expenses	\$3,594,599.20	\$8,464,919.00	42.46 %
NET OPERATING INCOME	\$1,709,974.32	\$2,337,090.00	73.17 %
Other Expenses			
9500 Ending Fund Balance		2,337,090.00	
Total Other Expenses	\$0.00	\$2,337,090.00	0.00%
NET OTHER INCOME	\$0.00	\$ -2,337,090.00	0.00 %
NET INCOME	\$1,709,974.32	\$0.00	0.00%

Western Lane Fire and EMS Authority

Transaction List by Date

November 2023

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	AMOUNT
11/01/2023	Bill Payment (Check)	11055	Hughes Fire Equipment, Inc	Cust No 17115	1001 Checking 5400	-2,001.79
11/01/2023	Bill Payment (Check)	11056	Overhead Door of the Oregon Coast	Cust No. 00-West439 & 00-Sius039	1001 Checking 5400	-340.00
11/01/2023	Bill Payment (Check)	11057	Shervin's Tire & Automotive		1001 Checking 5400	-115.00
11/01/2023	Bill Payment (Check)	11058	Medline Industries, LP	Cust # 1727108	1001 Checking 5400	-1,459.70
11/01/2023	Bill Payment (Check)	11059	Florence True Value	Cust No. 919	1001 Checking 5400	-17.97
11/01/2023	Bill Payment (Check)	11060	Custom Profile Engraving		1001 Checking 5400	-93.75
11/01/2023	Bill Payment (Check)	11061	Airgas USA LLC		1001 Checking 5400	-415.71
11/01/2023	Bill Payment (Check)	11062	Vend West Services Inc	WESLA & SVFIR	1001 Checking 5400	-103.40
11/01/2023	Bill Payment (Check)	11063	Lane Fire Authority		1001 Checking 5400	-725.40
11/01/2023	Bill Payment (Check)	11064	Systems Design		1001 Checking 5400	-4,849.46
11/01/2023	Bill Payment (Check)	11065	L.N. Curtis and Sons	Cust # C30653	1001 Checking 5400	-4,221.46
11/01/2023	Bill Payment (Check)	11066	Coastal Paper & Supply	3418	1001 Checking 5400	-425.96
11/01/2023	Bill Payment (Check)	11067	Cascade Fire Equipment		1001 Checking 5400	-394.84
11/01/2023	Bill Payment (Check)	11068	Henry Schein, Inc.		1001 Checking 5400	-3,843.01
11/01/2023	Bill Payment (Check)	11069	Westcoast Media Group, Inc.		1001 Checking 5400	-180.00
11/01/2023	Bill Payment (Check)	11070	Phil's Saw Shop		1001 Checking 5400	-32.50
11/01/2023	Bill Payment (Check)	11071	PacificSource Administrators	Employer ID P00194	1001 Checking 5400	-408.00
11/01/2023	Bill Payment (Check)	11072	Angie's Alterations		1001 Checking 5400	-7.00
11/01/2023	Bill Payment (Check)	11073	Davison Auto Parts	26588	1001 Checking 5400	-199.93
11/01/2023	Bill Payment (Check)	11074	Don Quinn		1001 Checking 5400	-160.00
11/01/2023	Bill Payment (Check)	11075	Crux Rescue		1001 Checking 5400	-800.00
11/01/2023	Bill Payment (Check)	11076	C.R.O.W.		1001 Checking 5400	-95.00
11/01/2023	Bill Payment (Check)	11077	Accuity	WEST8369	1001 Checking 5400	-
						17,500.00
11/01/2023	Bill Payment (Check)	11078	Matthew Danigelis, M.D.		1001 Checking 5400	-1,000.00
11/01/2023	Bill Payment (Check)	11079	Rob Chance		1001 Checking 5400	-859.20
11/01/2023	Bill Payment (Check)	11080	VALIC		1001 Checking 5400	-1,025.00
11/01/2023	Check	SVCCHRG		Service Charge	1003 WLFEA LGIP 6553	-0.10
11/03/2023	Bill Payment (Check)	EFT	IAFF Local 851		1001 Checking 5400	-3,170.75
11/03/2023	Bill Payment (Check)	EFT	IAFF Local 851		1001 Checking 5400	-83.00
11/03/2023	Check	EFT	VOYA	10-31-2023 Payroll contributions Voya	1001 Checking 5400	-6,000.00
11/03/2023	Check	EFT	Oregon Savings Growth Plan (OSGP)	10-31-23 payroll contributions OSGP	1001 Checking 5400	-2,879.58
11/03/2023	Bill Payment (Check)	EFT	WECO		1001 Checking 5400	-124.46
11/03/2023	Bill Payment (Check)	EFT	CECO	10003635	1001 Checking 5400	-4,939.37
11/03/2023	Check	EFT	ADP Payroll Services	processing charges for PR ending 9/30//2023 (67 x \$9.05 ea), delivery fee \$20.00	1001 Checking 5400	-663.95
11/06/2023	Bill Payment (Check)	EFT	CECO	10003635	1001 Checking 5400	-157.60
11/06/2023	Bill Payment (Check)	EFT	County Transfer & Recycling		1001 Checking 5400	-186.50
11/06/2023	Bill Payment (Check)	EFT	County Transfer & Recycling		1001 Checking 5400	-234.90
11/09/2023	Bill Payment (Check)	EFT	Central Lincoln PUD		1001 Checking 5400	-42.31
11/09/2023	Bill Payment (Check)	EFT	Central Lincoln PUD		1001 Checking 5400	-69.75
11/09/2023	Bill Payment (Check)	EFT	Central Lincoln PUD		1001 Checking 5400	-61.39
11/09/2023	Bill Payment (Check)	EFT	Central Lincoln PUD		1001 Checking 5400	-59.62
11/09/2023	Bill Payment (Check)	EFT	Central Lincoln PUD		1001 Checking 5400	-88.79
11/09/2023	Bill Payment (Check)	EFT	Central Lincoln PUD		1001 Checking 5400	-91.55
11/09/2023	Bill Payment (Check)	EFT	Central Lincoln PUD		1001 Checking 5400	-811.21
11/09/2023	Bill Payment (Check)	EFT	Charter Communications -St-1	8751 16 025 0143928	1001 Checking 5400	-38.92
11/10/2023	Bill Payment (Check)	EFT	Clear Rate Communications	4950169	1001 Checking 5400	-365.22
11/12/2023	Bill Payment (Check)	EFT	CenturyLink (Lumen)		1001 Checking 5400	-675.19
11/13/2023	Bill Payment (Check)	EFT	U.S. Bank Equipment Finance	Cust Credit Acct 1782465	1001 Checking 5400	-191.00
11/15/2023	Check	EFT	AFLAC	Oct 2023 premium for employee enrollments	1001 Checking 5400	-775.11
11/15/2023	Bill Payment (Check)	EFT	Standard Insurance Company	Policy # 00 762435 001	1001 Checking 5400	-4,188.33
11/15/2023	Bill Payment (Check)	EFT	Standard Insurance Company	Policy # 00 762435 001	1001 Checking 5400	-3,878.04
11/15/2023	Bill Payment (Check)	11081	Bi-Mart	Acct 9540/923247	1001 Checking 5400	-314.14
11/15/2023	Bill Payment (Check)	11082	Siuslaw Valley Firefighter Association (SVFFA)		1001 Checking 5400	-48.00
11/15/2023	Bill Payment (Check)	11083	OFDDA-LOSAP TRUST		1001 Checking 5400	-150.00
11/15/2023	Bill Payment (Check)	11084	Sign Stop		1001 Checking 5400	-25.00
11/15/2023	Bill Payment (Check)	11085	Canopy		1001 Checking 5400	-275.40
11/15/2023	Bill Payment (Check)	11086	Westcoast Media Group, Inc.		1001 Checking 5400	-100.00
11/15/2023	Bill Payment (Check)	11087	Chuck's Plumbing Inc		1001 Checking 5400	-207.00
11/15/2023	Bill Payment (Check)	11088	Coast Broadcasting		1001 Checking 5400	-375.00
11/15/2023	Bill Payment (Check)	11089	Country Media, Inc.		1001 Checking 5400	-1,429.00
11/15/2023	Bill Payment (Check)	11090	Florence Welding & Machine Shop		1001 Checking 5400	-1,440.00
11/15/2023	Bill Payment (Check)	11091	HRA VEBA Trust Contributions	84639	1001 Checking 5400	-6,000.00
11/15/2023	Bill Payment (Check)	11092	Oregon Apparatus Repair		1001 Checking 5400	-692.29
11/15/2023	Bill Payment (Check)	11093	TNT Sales & Repair Inc		1001 Checking 5400	-3,140.86
11/15/2023	Bill Payment (Check)	11094	Western Lane Ambulance		1001 Checking 5400	-10.00
11/15/2023	Bill Payment (Check)	11095	Darrek Mullins		1001 Checking 5400	-732.01
11/15/2023	Bill Payment (Check)	11096	On Spot Security	Acct # 22080087	1001 Checking 5400	-115.00
11/15/2023	Bill Payment (Check)	11097	Overhead Door of the Oregon Coast	Cust No. 00-West439 & 00-Sius039	1001 Checking 5400	-240.00
11/15/2023	Bill Payment (Check)	11098	L.N. Curtis and Sons	Cust # C30653	1001 Checking 5400	-1,056.00
11/15/2023	Bill Payment (Check)	11099	Trish Lutgen		1001 Checking 5400	-193.23

Western Lane Fire and EMS Authority

Transaction List by Date

November 2023

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	AMOUNT
11/15/2023	Bill Payment (Check)	11100	Soderstrom Architects	Project 23043.000	1001 Checking 5400	-
						13,104.55
11/15/2023	Bill Payment (Check)	11101	Hughes Fire Equipment, Inc	Cust No 17115	1001 Checking 5400	-
						11,238.58
11/15/2023	Bill Payment (Check)	11102	Vend West Services Inc	WESLA & SVFIR	1001 Checking 5400	-73.65
11/15/2023	Bill Payment (Check)	11103	Peace Health		1001 Checking 5400	-34.06
11/15/2023	Bill Payment (Check)	11104	SAIF	Policy # 100045711	1001 Checking 5400	-7,357.07
11/15/2023	Bill Payment (Check)	11105	Henry Schein, Inc.		1001 Checking 5400	-789.27
11/15/2023	Bill Payment (Check)	11106	ACCESS	EU2812	1001 Checking 5400	-178.69
11/15/2023	Bill Payment (Check)	11107	Airgas USA LLC		1001 Checking 5400	-1,363.59
11/15/2023	Bill Payment (Check)	11108	Coastal Fitness Inc	Client No. 8013	1001 Checking 5400	-961.00
11/15/2023	Bill Payment (Check)	11109	Coastal Paper & Supply	3418	1001 Checking 5400	-203.45
11/15/2023	Bill Payment (Check)	11110	Local Government Law Group PC		1001 Checking 5400	-1,053.00
11/15/2023	Bill Payment (Check)	11111	Special Districts Insurance Services		1001 Checking 5400	-
						64,244.63
11/15/2023	Bill Payment (Check)	11112	Benton County Public Works		1001 Checking 5400	-1,577.01
11/15/2023	Bill Payment (Check)	11113	CTX-Xerox	Contract # 23792-01	1001 Checking 5400	-693.05
11/15/2023	Bill Payment (Check)	11114	Custom Profile Engraving		1001 Checking 5400	-42.50
11/15/2023	Bill Payment (Check)	11115	Karl Storz Endoscopy-America, Inc.	Acct 134783 GV	1001 Checking 5400	-271.64
11/15/2023	Bill Payment (Check)	11116	SAIF	Policy # 100045711	1001 Checking 5400	-1,386.71
11/15/2023	Bill Payment (Check)	EFT	City of Florence		1001 Checking 5400	-275.13
11/15/2023	Bill Payment (Check)	EFT	City of Florence		1001 Checking 5400	-71.04
11/15/2023	Bill Payment (Check)	EFT	City of Florence		1001 Checking 5400	-46.14
11/15/2023	Bill Payment (Check)	EFT	City of Florence		1001 Checking 5400	-290.56
11/15/2023	Bill Payment (Check)	EFT	City of Florence		1001 Checking 5400	-213.40
11/17/2023	Check	EFT	Card Services Center	8/24-9/22/2023 monthly credit card expenses	1001 Checking 5400	-
						12,491.10
11/17/2023	Bill Payment (Check)	EFT	Spectrum - Charter Communications		1001 Checking 5400	-299.97
11/17/2023	Bill Payment (Check)	EFT	Spectrum - Charter Communications		1001 Checking 5400	-515.00
11/18/2023	Bill Payment (Check)	EFT	WECO		1001 Checking 5400	-47.17
11/19/2023	Bill Payment (Check)	EFT	Spectrum - Charter Communications		1001 Checking 5400	-184.97
11/20/2023	Bill Payment (Check)	EFT	South Coast Water		1001 Checking 5400	-37.68
11/21/2023	Bill Payment (Check)	EFT	RICOH	Cust # 15095401	1001 Checking 5400	-42.77
11/23/2023	Bill Payment (Check)	EFT	WAVE (Astound)	St-2	1001 Checking 5400	-194.92
11/23/2023	Bill Payment (Check)	EFT	WAVE (Astound)	St-1	1001 Checking 5400	-194.92
11/24/2023	Bill Payment (Check)	EFT	FIRSTNET (ATT)	287315307133	1001 Checking 5400	-1,652.36
11/25/2023	Bill Payment (Check)	EFT	Heceta Water		1001 Checking 5400	-32.98
11/27/2023	Bill Payment (Check)	EFT	Stepup IT Services LLC		1001 Checking 5400	-4,584.36
11/28/2023	Bill Payment (Check)	EFT	Central Lincoln PUD		1001 Checking 5400	-414.70
11/30/2023	Bill Payment (Check)	EFT	Stericycle, Inc (Shred-It)	Cust No 6117445	1001 Checking 5400	-403.56

Western Lane Fire and EMS Authority



Job Description

TITLE: Social Media Specialist (Part Time)

EFFECTIVE: 01/01/2023

REPORTS TO: Fire and EMS Chief

REVISED:

SALARY RANGE: Hourly rate TBD

CIVIL SERVICE CLASSIFICATION: Exempt

REPRESENTATION: NA

JOB SUMMARY

Responsible for promoting Authority programs and services to internal and external audiences using social media and possibly including videography, and photography; media relations; written and electronic materials; and marketing/outreach to inform the public on incidents and available services. The Media Specialist will also assist in the documentation of outreach events/activities and may support the Authority during major media/communication incidents. The Social Media Specialist reports directly to the Fire and EMS Chief and may take direction from senior Administration staff. The Social Media Specialist normally does not supervise individuals within the administrative division. There may be times when they will coordinate tasks with personnel working on special projects. This is a part time position requiring 10 hours per week or less.

ESSENTIAL JOB FUNCTIONS

- Develop and maintain social media content.
- Responsible for the administration of WLFEA sites on social media outlets including, but not limited to, Facebook, LinkedIn, Twitter, Instagram, Google+, YouTube and others to improve WLFEA social presence. Ultimately drive WLFEA social media presence ensuring high levels of web traffic and citizen/customer engagement.
- Maintain and evolve our social media strategy including personas and presence for each channel, consolidating input from the broader organization. Monitor for comments and social actions and respond to citizen/customer engagements.
- Be data-informed about what's working on social media and what's not. Report on results of social media campaigns and recommend improvements to increase effectiveness.
- Create and execute an editorial calendar for each channel to keep our presence fresh. Generate, edit, publish and share daily content (original text, images, video or HTML) that builds meaningful connections and encourages community members to take action.
- Other duties as assigned.

REQUIRED SKILLS

- Excellent written and oral communication skills, including use of proper grammar and ability to edit others' written materials.
- Knowledge of social media marketing programs and ability to optimize those programs for maximum affect.

PREFERRED SKILLS

- Web site design and maintenance experience.
- Public Information Officer (PIO) training.

EQUIPMENT

Operates office equipment, such as computers and software, calculator, copy machine, scanner, shredder, fax machine, and multi-line telephone.

PHYSICAL REQUIREMENTS

Ability to work in a home or office environment for an extended period of time to include, but not limited to, working at a computer workstation and sitting at an office desk.
Must be able to hear and speak clearly and have visual acuity (corrected vision or hearing is allowed).

CONDITIONS OF EMPLOYMENT

- Pass a Criminal Background and Reference Check.
- Work flexible hours as required.

RESIDENCY REQUIREMENTS

There are no residency requirements for this position.

The examples of duties are intended only as illustrations of the various types of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

The job description does not constitute an employment agreement between the employee and the Authority. This job description is subject to change by the Fire and EMS Chief as needed.

Western Lane Fire and EMS Authority



Job Description

TITLE: Western Lane Crisis Response Part Time Team Member

EFFECTIVE: 01/01/2023

REPORTS TO: WLCR Program Manager

REVISED:

SALARY RANGE: Hourly Pay / Cell Stipend / Shift Stipend

CIVIL SERVICE CLASSIFICATION: Exempt

REPRESENTATION: NA

JOB SUMMARY

Under the immediate supervision of the Western Lane Crisis Response (WLCR) Manager, the WLCR Part Time Team Member is responsible for responding to and providing resources to persons experiencing mental health episodes, suicidal thoughts, homeless issues, and other emergency situations which does not require law enforcement or pre-hospital EMS intervention. WLCR Part Time Team Member may also assist police with death notifications, provide crisis intervention and resources to families who have lost their home to fire, or provide grief support to family members who have just lost a loved one. WLCR Part Time Team Members also provide support and resource assistance to members of our Fire, EMS, law enforcement communities and their families.

WLCR Team Members are responsible for documentation of all interventions and must be able to communicate clearly with community members, WLCR Client Advocates and the WLCR Program Manager. Team Members are required to work a designated number of shifts monthly and attend the designated number of meetings and trainings. Team members are responsible for maintaining required certifications and completing necessary continuing education hours. WLCR Team Members may be asked to assist the WLCR Program Manager or WLCR Client Advocates with additional tasks such as community presentations, public engagements, maintaining resources and WLCR vehicle maintenance.

ESSENTIAL JOB FUNCTIONS

- Respond to incidents to provide assessment, crisis intervention, and support to clients within the Western Lane Ambulance Service Area. Examples include crisis situations such as suicidal subjects, acute mental health episodes, homeless individuals, requests for welfare checks, as well as other crisis situations (fire, crime, medical emergencies, and natural/manmade disasters)
- The WLCR vehicle is to be used when responding to calls
- In cases of suspected child, elder or domestic abuse, verbally report to law enforcement or the appropriate county agency and complete the Abuse Reporting form online before the end of shift
- Provide resource information to those in need
- Be familiar with local resources and what options are available for community members
- Document all WLCR calls on Elite/Image Trend by the end of their shift. If this is not possible, team members will need to communicate with management as soon as possible
- Clearly document interventions, assessments, all on scene assistance provided, and resources and/or supplies provided

- Attend WLCR team meetings twice a month
- Attend Quarterly WLCR trainings
- Complete Target Solutions on time
- Attend Siuslaw Valley Fire & Rescue Firefighter Association Meetings
- Provide clear written and verbal communication with community members and WLCR Team Members
- Participate in team case reviews and be willing to participate in WLFEA case reviews when requested
- Respond to texts, phone calls, and email communication from team members and WLCR Management
- Report issues with clear documentation through Chain of Command
- Assist with public education, presentations, and community events
- Assist with cleaning, inventory, and maintenance of WLCR vehicles, this includes refueling before gas drops below 3/4ths of a tank
- Restock resource material and supplies in the WLCR vehicles
- A willingness to work tactfully and respectfully with people in crisis regardless of their race, religion, sexual orientation, or lifestyle choices
- Professional dress (WLCR clothing will be provided) is to be worn whenever on duty and when working in the office
- Other duties as assigned

KNOWLEDGE, SKILLS & ABILITIES: To perform the job successfully, an individual should demonstrate the following:

- Ability to maintain confidentiality and remain compliant with HIPPA requirements
- Ability to work effectively as a member of an integrated team
- Ability to develop effective professional relationships with other community agencies
- Ability to work in a structured. Sometimes stressful environment and maintain a positive mental attitude
- Strong communication skills, both verbal and in writing
- Cultural sensitivity and experience working with people from diverse cultural backgrounds
- Ability to operate a personal computer and database software. Have the ability to navigate and utilize Internet and mobile devices
- Ability to work effectively and independently
- Must adhere to WLCR and WLFEA policies and procedures

REQUIRED EDUCATION, DEGREES, CERTIFICATES, AND/OR LICENSES

- High School diploma or equivalent
- One year experience (paid or volunteer) working in medical or social services or with disadvantaged individuals
- Experience in counseling, crisis work, or previous work as an emergency responder is strongly preferred
- Must meet minimum training and performance requirements and complete WLCR Academy
- Must obtain Peer Support Specialist (PSS) or Qualified Mental Health Associate (QMHA) or Qualified Mental Health Professional (QMHP) certification in the state of Oregon within 4 months of hire date

EQUIPMENT

Operates office equipment, such as computers and software, calculator, copy machine, scanner, shredder, fax machine, multi-line telephone, vehicles, radios, mobile devices such as phones and tablets.

PHYSICAL REQUIREMENTS

The physical demands and work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job.

- Employee may be required to lift 25lbs, ambulate on uneven terrain, remain standing or walking for 1-2 hours at a time, and sit for long periods of time
- Must have the ability to respond to emergency calls at all hours of the night, sometimes in challenging weather and/or under other stressful conditions

CONDITIONS OF EMPLOYMENT

- Must be 21 years of age or older
- Pass a Criminal Background and Reference Check
- Candidate must have a current Oregon Driver's License and pass DMV check
- Pass Pre-Employment Drug Screening
- Must meet minimum training and performance requirements and complete WLCR Academy

RESIDENCY REQUIREMENTS

Part Time Team Members are required to live within the Western Lane Fire and EMS Authority boundaries and must be able to respond within 30-minutes when responding to calls.

The examples of duties are intended only as illustrations of the various types of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

The job description does not constitute an employment agreement between WLCR Part Time Team Members and the Authority. This job description is subject to change by the Fire and EMS Chief as needed.

Oath of Office

103.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that oaths, when appropriate, are administered to authority members.

103.2 POLICY

It is the policy of the Western Lane Fire and EMS Authority that, when appropriate, authority members affirm the oath of their office as an expression of commitment to the constitutional rights of those served by the Authority and the dedication of its members to their duties.

103.3 OATH OF OFFICE

Upon becoming a member of the Western Lane Fire and EMS Authority as a fire or EMS professional as defined in OAR 259-009-0005, and where required by Authority ordinance or protocol, all members of the Western Lane Fire and EMS Authority shall take and subscribe to the following oath or affirmation in addition to any other form of oath or affirmation required.

I (member name), do solemnly swear to do my duty as a (position) for (District)**to the best of my ability; to serve my commanding officers with respect and loyalty; to serve the citizens of our community with compassion, courage, and integrity;to represent (District) and community with honor and dignity both on and off duty;and to uphold the laws and constitutions of the United States of America, the State of Oregon, and the communities we protect, so help me God.**

When a person to be sworn has conscientious scruples against taking an oath, he/she shall be permitted to be affirmed. The words of the affirmation shall be the same as the words of the prescribed oath, except that the word "affirm" shall be substituted for the word "swear."

103.4 MAINTENANCE OF RECORDS

The oath of office shall be filed as prescribed by Authority ordinance or protocol.

Collective Bargaining

111.1 PURPOSE AND SCOPE

The Oregon State Legislature enacted the Public Employee's Collective Bargaining Act (PECBA) in 1975. The PECBA requires that public employers' bargain in good faith with their employees in matters concerning wages, hours, and terms and conditions of employment. The Authority's Union is organized as Local 851 under the International Association of Firefighters and represents the classifications of Firefighter / Engineer, Firefighter / Paramedic, Fire Lieutenant, Fire Captain, and Training Coordinator with Siuslaw Valley Fire & Rescue. Local 851 also separately represents the classifications of EMT-Intermediate and Paramedic with Western Lane Ambulance District. A labor agreement is negotiated with each bargaining Unit in accordance with PECBA legislation. While the goal of PECBA is that the employer and employee group negotiate an agreement, the rules also describe the process to resolve an impasse in the negotiating process. If a negotiated agreement is not reached, an independent arbitrator ultimately determines the terms of an agreement. The length of an agreement may vary but generally extends from one (1) to three (3) years.

111.2 POLICY

It is the policy of the Board of Directors to bargain in good faith with established labor units as specified by State law.

District Compliance with Local Budget Law

112.1 PURPOSE AND SCOPE

Compliance with Oregon's Local Budget Law (ORS 294.305 - 294.565) is required prior to the expenditure of any monies or the levy of any tax upon property located within the District. ORS 294.326. The District shall comply with the provisions of the Local Budget Law, and with the instructions and requirements of the Department of Revenue, which has been charged by the Legislature with responsibility to interpret and administer the Local Budget Law. In preparing and adopting its Budget, the Budget Manual shall guide the District for Municipal Corporations, published by the Department of Revenue, and the Department's various forms and instructions.

112.2 POLICY

112.2.1 APPOINTMENT OF BUDGET OFFICER

Pursuant to ORS 294.331, the District Board of Directors shall designate a Budget Officer to prepare or supervise the preparation of the District's Budget. The Budget Officer shall fully acquaint himself/herself with the Local Budget Law and the budget preparation process. The Budget Officer shall act under the direction of the Board. Unless otherwise specified by the Board of Directors the Fire & EMS Chief shall serve as the Budget Officer.

112.2.2 PREPARATION OF PROPOSED BUDGET

The Budget Officer shall prepare or supervise preparation of the proposed Budget. The Budget Officer shall then publish a "Notice of Budget Committee Meeting" as set forth in ORS 294.401. The first publication of the budget committee meeting cannot be more than 30 days, nor less than 5 days prior to the meeting date. The second notice of the budget committee meeting must be published at least 7 days after the first notice.

112.2.3 BUDGET COMMITTEE

Pursuant to ORS 294.336 (5), the District shall establish a Budget Committee consisting of the members of the Board of Directors and an equal number of qualified electors of the District. Any increase or reduction in the number of the members of the District's Board of Directors shall cause a like increase or reduction to be made in the number of the appointive citizen members of the Budget Committee. At its first meeting, the Budget Committee shall elect a chairperson and a secretary. The Committee shall meet from time to time to review and revise or approve the proposed Budget presented by the Budget Officer. All meetings of the Budget Committee are subject to Oregon's Public Meetings Law. Members of the Budget Committee shall receive no compensation for their services. The appointive members of the Budget Committee shall not be considered officers, agents, or employees of the District. Each member shall serve a three-year term. Terms of office on the Budget Committee shall be staggered, as the Board of Directors shall determine and the term shall end on June 30th.

District Compliance with Local Budget Law

112.2.4 PUBLICATION OF BUDGET SUMMARY AND NOTICE OF BUDGET HEARING (ORS 294.416, 294.418, 294.421)

After the Budget Committee has approved the budget, the Board of Directors of the District shall hold a budget hearing. Five to twenty-five days before the scheduled hearing, the Board of Directors shall publish a "Financial Summary and Notice of Budget Hearing," (LB-1 form). This information must appear in a newspaper of general circulation published in the District. If the notice is posted instead of being published, a second notice is required. The second notice must be published not less than five or more than 30 days before the hearing.

112.2.5 BUDGET HEARING (ORS 294.430)

The Board of Directors of the District shall hold the scheduled budget hearing on the date specified in the public notices given. The purpose of the hearing is to take citizen testimony on the Budget approved by the Budget Committee. Additional hearings may be held if necessary. All hearings are open to the public, and subject to Oregon's Public Meetings Law.

112.2.6 BUDGET ADOPTION, APPROPRIATIONS, AND TAX LEVY

The District's Board of Directors may make changes in the approved budget before it is adopted, subject to the limitations set forth in ORS 294.435. These limitations cannot be exceeded without first publishing a revised Financial Summary and holding another budget hearing. Once all budget hearings have been concluded, and upon consideration of relevant testimony received at such hearings, the District's Board of Directors shall adopt the Budget. The District's Board of Directors shall prepare a resolution or ordinance formally adopting the Budget; making appropriations; and determining, making and declaring the ad valorem tax levy for each fund. The budget must be adopted and appropriations made by June 30th.

112.2.7 CERTIFICATION OF LEVY

The following shall be submitted to the County Assessor's office by July 15 of each year:

- Two copies of the notice of property tax, which contain the categorization certification and the statement of the budget committee approved tax amounts.
- Two copies of the resolution statement that adopt the budget, makes appropriations, and declare and categorize taxes.
- Two copies of ballot measure for any tax that receives voter approval.
- No later than September 30 of each year send one complete copy of the budget to the Lane County Clerk (ORS 310.060 (7))

112.2.8 POST-ADOPTION CHANGES TO THE BUDGET

Post-adoption changes to the budget are restricted by statute. ORS 294.326 provides for authorizing appropriations as an exception to the budget process. ORS 294.450 governs the transfer of appropriations within a fund or from the general fund to another fund.

ORS 294.455 provides for the expenditure of funds to repair or replace property that has been damaged or destroyed. It also allows funds to be expended because of civil disturbance or natural disaster.

District Compliance with Local Budget Law

ORS 294.460 is concerned with loans from one fund to another.

ORS 294.480 specifies the conditions under which a local government must adopt a supplemental budget.

ORS 294.483 provides exceptions for certain debt service expenditures.

Board of Directors

101.1 PURPOSE AND SCOPE

To describe the responsibilities of members of the board of Directors for Siuslaw Valley Fire & Rescue, Western Lane Ambulance District, and Western Lane Fire and EMS Authority.

101.2 POLICY

101.2.1 ORGANIZATION STRUCTURE

The Board of Directors oversees the Fire & EMS Chief, Civil Service Commission (SVFR), and their respective Budget Committees. The Board authorizes all positions in the organization and entrusts the Fire & EMS Chief to organize them as necessary to carry out the business of the Authority.

101.2.2 DISTRICT MANAGEMENT

The Board is required by state law to appoint a Fire & EMS Chief. The Fire & EMS Chief operates under the direction of the Board of Directors. The Authority management structure must be clearly defined to ensure efficient operations under all conditions. Unity of command is established through the adoption of a formal organization chart and position classifications (job descriptions). Decision making authority and reporting responsibility (unity of command) must be maintained under normal and emergency conditions. The Fire & EMS Chief has the discretion to appoint a temporary acting in capacity officer in his/her absence. District policies should establish a plan of temporary succession in the event of an unexpected or extended absence of the Fire & EMS Chief. Temporary succession of command should be based on predetermined procedures until the Board of Directors can meet to address the issue and determine the most appropriate course of action. If the position of Fire & EMS Chief is vacant (retirement, resignation, death), the Board of Directors has sole authority and responsibility to determine how the duties of Fire & EMS Chief will be addressed on both the interim and permanent basis.

101.2.3 DIRECTOR QUALIFICATIONS

Oregon Revised Statutes 478.050 states, "A director of a district shall be an elector or an owner within the district. A district may determine, by ordinance that takes effect at least one (1) year prior to the date of a regular district election, that firefighters or paramedics of the district, volunteer or otherwise, and other district employees shall not serve as directors." The Fire District Board of Directors adopted Ordinance No. 01-2014 on August 15, 2014 prohibiting volunteer members and employees of the District from serving as a District Director. A Director or interested person can seek election to any position. The term of office is four years. The Board of Directors must consist of five members. A district may, with voter approval, establish subdistricts (wards) for the purpose of nominating or electing two or more director positions. Siuslaw Valley Fire and Rescue elects all Directors at-large; sub-districts have not been established. Directors or interested persons should view the statutory requirements highlighted above as the minimum qualifications for service on the Board of Directors. Directors should also ensure they have sufficient time and commitment to

Board of Directors

perform the duties of a Board as described in state law and necessary for the orderly governance of the District.

101.2.4 OATH OF OFFICE

An Oath of Office is an affirmation a person takes before undertaking the duties of an office. An Oath is not required by law but can be required by Policy.

- The Board President shall be responsible for administering the Oath of Office to the other Directors.
- The Board Vice President shall be responsible for administering the Oath of Office to the Board President.
- The Board President of Western Lane Fire and EMS Authority, or his/her designee, shall be responsible for administering the Oath of Position to the Fire & EMS Chief.

Oath of Office for a Director position:

“You have been elected (or appointed) to represent the communities served by (Siuslaw Valley Fire & Rescue) or (Western Lane Ambulance District).”

“Your behaviors, decisions and actions directly reflect the image of (Siuslaw Valley Fire and& Rescue) or (Western Lane Ambulance District), other Board Members, its personnel, and the level of service the District provides to the citizens we serve.”

“Please raise your right hand and repeat after me:”

“I, (STATE YOUR NAME), do solemnly affirm that I will uphold the vision, mission, values and policies adopted by (Siuslaw Valley Fire and& Rescue) or (Western Lane Ambulance District); I will act for the good of the communities of which I serve; I will endeavor for the preservation of life and property; I will strive for excellence while I faithfully, honestly, and ethically perform the duties of Director with (Siuslaw Valley Fire and& Rescue) or (Western Lane Ambulance District).”

“You are now duly affirmed as a Director for (Siuslaw Valley Fire and& Rescue) or (Western Lane Ambulance District).

101.2.5 DIRECTORS RESPONSIBILITIES

Oregon Revised Statutes, Chapter 478 addresses the duties, power, and authority of fire districts. ORS 478.210. Oregon Revised Statutes pertaining to health districts are 440, Health District and Oregon Revised Statute 198, Special Districts.

The key duty of a Board Director is to make decisions. The law requires that the Board of Directors make all decisions as a unit. Individual decisions are invalid. In order to function effectively as a member of a board, each Director should:

- Become familiar with the Oregon Revised Statutes, Oregon Administrative Rules and other regulations related to the routine and emergency activities of the District.
- Directors are elected to work for the good of the District. Personal interest shall be subordinate to working for the good of the overall board, District, and public interest.

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- Support board decisions and actions.
- Suspend judgment until sufficient information is available to make informed and supportable decisions.
- Recognize the difference between policy issues that the Board of Directors should address and administrative and operational issues that the District Staff should address.
- Understand the need for teamwork with other Directors and District Staff.
- Accept responsibility for total board operation. While board officers are elected, all Directors should prepare to function in any elected board officer position.
- Commit sufficient time to prepare for each meeting by reading all materials provided and spending any additional time necessary to develop an understanding of the issues to be considered.
- Be open to effectively deal with all forms of public input regardless of the form in which the public input is delivered.
- Deal effectively with controversy, differences of opinion, and criticism in a manner that neither the board nor individual Director becomes the focus of acrimony.
- Conduct all business with the highest moral and ethical standards and in accordance with the Oregon Government Ethics laws.
- If a Director possesses professional expertise that can be of benefit to the District the Fire & EMS Chief may ask for the assistance of the Director in the completion of special project work. Throughout the project work the Director will report to the Fire & EMS Chief and focus only on the task they have been assigned.

101.2.6 DIRECTOR CODE OF ETHICS

The term "Ethics", used in its broadest form, refers to a set of moral principles. Not every individual within an organization has the same perception of ethical conduct. People base their decisions on experience, personal values, and learned behavior. A "Code of Ethics," as used in this policy, refers to the general rules of conduct the Board recognizes in respect to governance of the District. This code of ethics is intended to serve as a guide for Board Directors. The Board is committed to excellence in leadership and decision-making that results in the highest quality of service to its residents and taxpayers. It is the Board of Director's intent to review this policy annually in the month of July.

- (a) The Board will follow all regulations and laws related to the conduct of District business. It will also honor its own adopted policies and procedures. Knowing the law is the starting point of effective governance.
- (b) The Board recognizes the dignity, values, and opinions of one another, staff members, employees, and the general public. It will encourage responsiveness and effective participation in all its communications.
- (c) The Board recognizes its primary responsibility is the formulation and evaluation of policy and the employment of a Chief Executive Officer (Fire & EMS Chief) to administer District business at the direction of the Board.

Board of Directors

- (d) The Board recognizes that operational matters of the District should be directed to the Fire & EMS Chief and Staff.
- (e) The Board commits to conducting all meetings in accordance with the Oregon Public Meetings laws. It recognizes that District business is to be conducted in public with the exception of specific topics that meet the criteria for Executive sessions.
- (f) The Board will focus on issues and seek solutions that are in the best interest of the public and avoid issues of personality and/or special interests.
- (g) The Board, both as a body and as a group of individuals will support decisions made by the Board. Individual Directors may disagree with a certain decision but should support the position as the considered opinion of the Board. This position is not intended to restrict further consideration based on additional information but to provide for the effective continuation of District business.
- (h) The Board will work directly with the Fire & EMS Chief and Staff to obtain information and/or an enhanced understanding to improve effective decision making. The Board should direct any complaint and/or issue directly to the Fire & EMS Chief. It is the responsibility of the Fire & EMS Chief to resolve the issue as may be necessary.
- (i) ~~Board Directors, to the greatest extent possible, will forward business items to either the Board President or the~~ ~~for inclusion in a Board of Directors meeting agenda. The goal is to provide public notification of the issue and to allow time for the Staff and other Board Directors to research/consider the topic.~~ Any member of the Board of Directors can place items in any meeting for which the Director is a member by submitting the item by voice, email, fax, hand delivered message, or posted mail to either the Board President, the Presiding Chairman, or the Fire & EMS Chief for inclusion in the meeting agenda; doing so at least ten (10) calendar days prior to the meeting; and providing a proposed text. Those receiving the submittal are to acknowledge receipt within one (1) business day; and within three business days, either notification of inclusion into the agenda including the actual text being used or a written detailed explanation why the submission has been denied or delayed by the Board President or Presiding Chairman. The goal is to provide public notification of the issue and to allow time for the Staff and other meeting attendees to research and consider the agenda item.
- (j) The Board recognizes it operates as a unit and that individual Board Director authority exists only as a member of the whole.
- (k) The Board acknowledges that policy decisions require Board action. When an individual Board Director receives a policy related question, the response must be based on established policy. The question may be brought to the full Board for further consideration. When such questions arise, the topic should be forwarded to the Board President and/or Fire & EMS Chief for inclusion in a Board of Directors meeting agenda.

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- (l) The Board recognizes effective operations require a team approach. The Board, Fire & EMS Chief, and Staff members are expected to work together in a collaborative process assisting each other in the conduct of District business.
- (m) The Board recognizes the value of long-term planning and interaction with other agencies and will constantly maintain a focus on the long-term stability of the District and service to its residents and taxpayers.
- (n) The Board will be courteous and responsive to citizen requests and will generally direct their concerns and interests to the Fire & EMS Chief as appropriate.
- (o) The Board as a body, and as a group of individuals, acknowledges that information and study foster good decision making and will commit the necessary effort to develop a working understanding of all issues that come before the Board.
- (p) The Board acknowledges that conflict or differences of view could arise between members and will seek effective remedies that are in the best interest of the Board and the District.
- (q) The Board will seek legal counsel when indicated and will be guided by the legal advice provided.
- (r) The Board acknowledges that conflicts of interest may occasionally arise and that each Board member is responsible to declare such actual or potential conflicts as specified in Oregon Revised Statutes and/or Oregon Administrative Rule.

101.2.7 DIRECTOR CONFLICT OF INTEREST

The state laws related to conflicts of interest were established in 1974. The laws are now known as "Government Ethics." They are included in Oregon Revised Statutes (ORS) Chapter 244. Directors, Board Appointees (Budget Committee & Civil Service), District employees, and District volunteers are Public Officials as defined by the law. The laws require public officials to disclose any situation that could be either a potential or actual conflict of interest. An actual conflict of interest may arise when a public official takes official action that would financially impact the official, a relative or an associated business. A potential conflict of interest may arise when a public official takes official action that could financially impact the public official, the official's relatives, or a business with which the public official or a relative is associated. The standards for disclosure and subsequent action depend on whether the circumstance in question is an actual or potential conflict. The Board, in its desire to ensure all business decisions are made in full disclosure and compliance with the law, has implemented the practice of requiring Directors to annually submit an individual Statement of Acknowledgment concerning conflicts of interest. This process is designed to refresh Board member's knowledge of the State of Oregon Government Ethics laws and does not relieve the Board member from declaring an actual/potential conflict before participating in any official action throughout the year.

101.2.8 ELECTED BOARD OFFICES

All Directors are eligible for election and should view the election to office as a routine and expected responsibility of being a Director. Oregon Revised Statutes require each Board to elect a President, Vice President, and a Secretary-Treasurer. While the term of office is one (1) year,

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there is no limitation on the number of sequential terms an individual may serve; however, rotation of officers is encouraged for fuller participation by Directors. Board officers are elected annually in July at the first Board meeting of each fiscal year. Each elected officer takes office immediately and serves until the first Board meeting of the following fiscal year, or until a successor is elected.

The duties of the President include:

- Presiding at meetings of the Board of Directors. The President shall perform all of the duties prescribed by the Oregon Revised Statutes.
- Consulting with the Fire & EMS Chief regarding the preparation of each Board meeting agenda.
- Participating, along with other Board Directors, with all the rights to discuss issues, make motions, nominate candidates, and to vote.
- Calling Special Meetings (study sessions, executive sessions, and/or additional regular sessions) of the Board as described by the Oregon Public Meetings Law and in compliance with the Special Meeting Policy.
- Signing official District documents on behalf of the Board when authorized by the Board.
- Making appointments with the consensus of the Board as may be required by law and/or for the orderly representation of the Board.

The duties of the Vice-President include:

- Serving as President in the absence of the President with all the powers and duties as described above. The Vice-President shall have such other powers and duties as a majority of the Board may determine.
- Assuming the position of President in the event of absence, resignation, incapacity, or inability to serve of the President.
- Serving on such committees and/or as representative as appointed by the Board President.

The duties of the Secretary-Treasurer include:

- Ensuring accurate minutes of each Board meeting are taken, transcribed, and distributed. Ensuring official minutes are properly authenticated and maintained in chronological order. These duties may be delegated to District staff members under the supervision of the Secretary Treasurer.
- Ensuring accurate accounting and financial records are maintained by the District. Reviewing the District's financial audit with the District auditor, Fire Chief, and Chief Finance Officer prior to submittal to the Board.
- Conducting a properly called Board Meeting in the absence of the President and Vice-President.
- Serving on such committees and/or as representative as appointed by the Board President

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101.2.9 BOARD APPOINTMENTS

The appointment of committees and/or representatives is a routine function of a board. Ordinarily the Board President will make the appointments with the concurrence of the full Board. The appointees may be Board, Staff, and/or citizen appointments depending on the position. Appointments are made in response to statutory requirements (Civil Service Commission, Budget Committee), to study specific issues, or to represent the District in associations or other interagency activities (Florence Urban Renewal Agency Committee). The particular authority and duties of appointees whether a Director, District staff member, or citizen are either specified by statutory requirements or will be set by the Board President with a consensus of the Board at the time of appointment. Board appointments may be ad hoc or ongoing.

Current ongoing appointments include the following:

- Civil Service Commission (SVFR only) – three (3) citizen members with four-year terms.
- Budget Committee – five (5) citizen members with three-year terms. While the committees required by state law may have specific selection criteria, the Board generally has broad discretionary authority in the process. The term of appointment for citizen positions on this committee is considered to expire on June 30th.

The following process is used when making citizen appointments to the Civil Service Commission and the Budget Committee:

- Advertise the vacancy to identify qualified applicants.
- Review applicants for qualifications.
- Interview qualified applicants as may be necessary.
- Make selection and appointment in a manner selected by the Board.
- Conduct orientation and/or training as may be necessary.

Selection Considerations: The Board should give consideration to, but not be limited to, the following qualifications:

- (a) Prior budget committee experience, especially with the District.
- (b) Background and understanding of financial management or other professional experience that could benefit the District.
- (c) Availability of time and willingness to participate.
- (d) Decision making and group consensus skills.
- (e) Absence of known conflicts of interest.
- (f) A desire to help the District.

Committee members seeking appointment for political reasons or the opportunity to interfere in District business should not apply and/or be appointed. An appointment of a Director or District staff member to represent the District or the Board of Directors to an ad hoc or ongoing committee should be based on qualifications and availability. Appointments to these positions are

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the responsibility of the Board President but should be discussed during a public meeting to ensure the consensus of the Board approves the appointment. Although, if an appointment is required before it can be discussed in a public meeting, the Board President may make the appointment and discuss it at the next Board Meeting. A citizen appointed to a committee may be removed by the Board President at any time but this action should be discussed during a public meeting to ensure the consensus of the Board approves the removal.

The Board should give consideration to, but not be limited to, the following qualifications:

- Prior budget committee experience, especially with the District.
- Background and understanding of financial management or other professional experience that could benefit the District.
- Availability of time and willingness to participate.
- Decision making and group consensus skills.
- Absence of known conflicts of interest.
- A desire to help the District. Committee members seeking appointment for political reasons or the opportunity to interfere in District business should not apply and/or be appointed.

An appointment of a Director or District staff member to represent the District or the Board of Directors to an ad hoc or ongoing committee should be based on qualifications and availability. Appointments to these positions are the responsibility of the Board President but should be discussed during a public meeting to ensure the consensus of the Board approves the appointment. Although, if an appointment is required before it can be discussed in a public meeting, the Board President may make the appointment and discuss it at the next Board Meeting.

101.2.10 FILLING BOARD VACANCIES

When vacancies in Board positions occur midterm, state law charges the Board of Directors with the responsibility of filling the position. In the event there is less than a majority (quorum) of remaining Board Directors or if a majority of the remaining Board Directors cannot agree, the Lane County Court (County Commissioners) will make the appointment(s). The person appointed to fill the vacant position will serve through June 30 following the next regular District election (odd-numbered year). The appointee may run for the position at the next regular District election. The law does not give specific direction on either the process or the criteria that the Board of Directors should use to fill a vacancy other than the appointee must meet the basic statutory requirements.

- (a) Selection Process: The Board may select the process it determines is in the best interest of the District to identify and screen applicants and make appointments. The following process is generally followed:
1. Make the vacancy known through advertisement or other method;
 2. Screen applications as may be necessary;
 3. Interview the most qualified applicants;

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4. Select the most qualified applicant. Selection may be by Board consent or by ballot. The Board of Directors may base the vote on simple majority or on a score based on a total of the applicant ranking by each sitting Director.
 5. Officially appoint the successful candidate. The newly appointed Director will take the Oath of Office. The appointment will take effect immediately.
- (b) Selection Considerations: The Board should give consideration to, but not be limited to, the following qualifications:
1. Past local government experience.
 2. Understanding of Oregon open meeting and public records laws.
 3. Prior budget committee experience, especially with the District.
 4. Prior Board of Director experience with other districts.
 5. Background and understanding of financial management or other professional experience that could benefit the District.
 6. Availability of time and willingness to participate.
 7. Decision making and group consensus skills.
 8. Absence of known conflicts of interest.
 9. A desire to help the District. Candidates seeking appointment for political reasons or the opportunity to interfere in District business should not apply and/or be appointed.

101.2.11 DISTRICT ELECTIONS

The County Clerk is responsible for the conduct and administration of all District elections. The Oregon Revised Statutes establish election dates, filing deadlines, and requirements. It is the responsibility of the District to ensure that all District elections comply with these statutes. There are a variety of reasons the District may require an election:

- Local option tax levy
- Board of Director election
- Board of Director recall
- Annexation proposal
- Changes in service fee structure
- Consolidation, merger, or dissolution
- Sub-districts.

The Oregon Revised Statutes specify procedural requirements for each different type of election. An Elections manual is available from the County Clerk which outlines the procedural requirements in detail. The County Clerk will issue a Certificate of Election finalizing the results after the election.

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The Board of Directors designates the Fire & EMS Chief as the contact person for Western Lane Fire and EMS Authority.

101.2.12 ORDINANCES AND RESOLUTIONS

The general form for taking action on business items involves the passing of motions. In certain situations, the Board may find the need to adopt an ordinance or a resolution.

An ordinance is an authoritative rule or law adopted by the Board in conjunction with State Law. The District adopts ordinances that include the adoption of a fire code, collection of fees, formation of a contract review board, prohibition of volunteers and employees from being Directors, requirements for insurance of public firework displays, and medical and fire stand-bys at certain events. Oregon Law provides specific procedures that must be followed in the advertisement and adoption of ordinances. Ordinances are effective until repealed.

A resolution is a formal motion that expresses formal opinion. The District adopts resolutions in the same manner as all main motions. In general, the District utilizes resolutions when required by law or when the proposal is lengthy and/or highly important. Resolutions are usually prefaced with whereas statements, that state the reasons for the resolution.

Resolutions remain in force until rescinded or for the length of time specified in the resolution.

101.2.13 MEETING AGENDAS

An agenda is a list of specific items under each division of the order of business that the Board plans to discuss at a meeting. An agenda adds order to the conduct of regular business. Unless specifically established by the Board, an agenda does not preclude other items of business from being proposed, considered and decided during the meeting. The agenda is flexible, and items may be added, omitted, or changed at the discretion of the presiding officer. It is important to note that while all meetings are open to the public, the meeting is a meeting of the Board of Directors. The presiding officer may or may not accept discussion or the addition of new topics. The Chief / Director, in consultation with the Board President, normally prepares the Board meeting agendas. Regular monthly agendas are prepared and sent to the Board members prior to the meeting. The format of agendas for special, emergency, or executive meetings depends on the scope and order of the business.

The format for regular meetings includes the following major divisions:

1. Call to order
2. Pledge of allegiance
3. Roll call of Directors
4. Approval of minutes of previous meetings
5. Public comment, (not to exceed three minutes per speaker with a maximum of thirty minutes for all public comment)
6. Approval of Consent Agenda typically consisting of:
 1. Meeting minutes

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2. Staff Reports
3. Correspondence
7. Financial review
8. Old business
9. New business
10. Individual Board member comments
11. Future business
12. Executive session as needed
13. Adjournment.

101.2.14 MEETING MINUTES

Oregon Public Meetings Law requires that minutes be taken for all Board meetings. Minutes for regular and special sessions must be written. Executive session minutes may be recorded. Minutes for public meetings must include a listing of:

- Members present.
- All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
- Results of all votes, including the vote of each member by name.
- The substance of any discussion on any matter.
- Subject to ORS 192.410 - 192.505 relating to public records, a reference to any documents discussed at the meeting.

Executive session minutes are stored separately from other minutes. If minutes of an executive session are kept by recording, written minutes are not required. If the disclosure of material in executive session minutes would be inconsistent with the purpose for which the executive session was held, the material may be withheld from disclosure.

101.2.15 MEETING NOTICES

Oregon Public Meetings Law requires that public notice be given of the time and place of all public meetings, including regular, special, and emergency meetings. This requirement applies to all meetings for which a quorum is required even if the meeting is for the sole purpose of gathering information to serve as the basis for a subsequent decision or recommendation by the Board.

The law requires that notice be given to the media and to those who have stated in writing that they wish to be notified of meetings. The notice must include a list of the principal subjects anticipated to be considered at the meeting. A reasonable effort must be demonstrated to be inclusive, but the law does not preclude the addition of items to the agenda that arose after the preparation of the agenda.

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The Public Meetings Law provides specific detail related to content, timing, and distribution of required notices depending on the nature and type of meeting. The Board and Administrative Staff must be aware of and ensure notices comply with these standards. The State Attorney General's Office publishes and makes available through the Internet the "Attorney General's Public Records and Meetings Manual."

101.2.16 EXECUTIVE SESSIONS

"Executive session" is defined by Oregon Law as any meeting or part of a meeting of a governing body, which is closed to certain persons for deliberation on certain matters. An executive session is a type of public meeting and must conform to all applicable provisions of the Public Meetings Law.

The meeting notice requirements for executive sessions are the same as for other public meetings. However, there is an additional requirement that the statutory authority and reason for the session must be set forth. An executive session may be called during a regular, special, or emergency meeting for which notice has already been given.

The Board may not make final decisions during any executive session. The Board may arrive at a consensus during the executive session, but a final vote must be made during the public portion of a meeting. The purpose of this requirement is to allow the public to know the result of the discussions.

Generally, an executive session is closed to all except members of the governing body, persons reporting to it on the subject of the executive session, and the news media (with certain restrictions). The presiding officer must declare that the subject of the executive session is not to be disclosed.

Oregon Revised Statutes identify ten purposes for which an executive session may be conducted. The specific law should be reviewed in each instance to ensure the statutory restrictions and conditions are being met.

1. Employment of Personnel
2. Discipline of Public Officers and Employees
3. Medical Staff of a Public Hospital
4. Consultation with Labor Negotiator
5. Real Property Transactions
6. Exempt Records
7. Trade or Commerce
8. Litigation/Consultation with Legal Counsel
9. Performance Evaluations
10. Labor Negotiations

Board of Directors

101.2.17 PARLIAMENTARY PROCEDURES

Rules of parliamentary procedure provide the means for orderly and expeditious disposition of matters before the Board. They govern the way Directors interact with each other. To facilitate decision-making, a simplified and flexible approach to parliamentary procedure is helpful. The Robert's Rules of Order shall be utilized to ensure a smooth and effective meeting takes place.

The basic principles of parliamentary procedure that apply include:

- All Directors have equal rights, privileges, and obligations
- The majority vote decides all issues.
- The rights of the minority are protected.
- Each Director has the right to understand every proposition presented for decision, and to engage in full and free discussion of the proposition's advantages and disadvantages before taking action.
- The simplest and most direct procedure for accomplishing a purpose shall be observed, as long as it does not violate the rights of Directors or the laws.
- Directors will be protected from abuse by visitors, spectators, and other participating in the Board's activities, by use and enforcement of orderly processes.
- All meetings shall be characterized by fairness and good faith.

A copy of Robert's Rules of Order is available for reference through the District Administrative Office.

101.2.18 PUBLIC PARTICIPATION

All Board meetings, except executive sessions, are open to the public. Although State Law only requires the Board to permit public participation during Public Hearings, it is the practice of the Board to accept comments from the public on agenda topics or other related concerns.

Near the beginning of the meeting the Board President or presiding officer will ask if anyone in the audience wishes to comment on any agenda items or would like to address the Board on a different topic. Individuals wishing to speak are given the opportunity to introduce themselves and state the agenda item or topic they wish to address. The presiding officer will then determine when and if the concern will be addressed. Any topic may be postponed to a later meeting to allow time to gather necessary information and/or to ensure adequate public notice of the topic.

The presiding officer has inherent authority to keep order and to impose any reasonable restrictions necessary for the efficient and orderly conduct of a meeting. The presiding officer may regulate the order and length of appearances and limit appearances to presentations of relevant points. Any person who fails to comply with reasonable rules of conduct or who causes a disturbance may be asked or required to leave.

101.2.19 PUBLIC MEETINGS

The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which decisions are made. The key

Board of Directors

requirements of the Public Meetings Law apply to all meetings of a governing body for which a quorum is required to make decisions or to deliberate toward a decision. Key requirements of the Law require that all meetings are open to the public, unless an executive session is authorized, to give notice of the meeting, and to take minutes of the meeting.

The Public Meetings Law applies to all meetings. The law does not cover purely social gatherings, but Board members must be cautious to avoid any discussions of official business during such gatherings. Conference calls and other forms of electronic communications are specifically identified in the law. In situations when a Board Member elects to communicate with other Board Members electronically, it is recommended that the message be sent using a blind copy method to avoid unintended group discussions that should be conducted during a public meeting. Notice for such meetings is required and the public must be given at least one location where the meeting may be heard.

The Law also requires that the District recognize and provide special accommodations as may be necessary to provide access for persons with disabilities.

The Law does not require that the public be present and/or be given the opportunity to participate in Board deliberations, but the public must be given notice and meetings must be conducted in locations that afford attendance by the public. The Board and Administrative Staff must be aware of these standards and ensure all meetings comply.

101.2.20 SPECIAL AND ADDITIONAL BOARD MEETINGS

Occasionally, the need arises for the Board to meet and discuss a particular topic. These situations are rare but do occur. In these situations, any time a majority of the Board (three Board Members) wants to request an additional Board Meeting it shall be scheduled by the Board President.

Polling of Board Members to determine the need for an additional meeting will occur by a Staff Member. If the polling is done by email, the Staff member shall send it to each Board Member as a Blind Carbon Copy. Board Members who respond should send their reply directly to the Staff Member and not forward their response, questions, or discussion, to any other Board Member.

101.3 APPROVALS

Adopted: (date)

Reviewed: June 22, 2023



WESTERN LANE FIRE AND EMS AUTHORITY

RESOLUTION 2023-04

**Resolution 2023-04 Amending Lexipol Policy 107: Board Functionality, Officers and Meetings
by Adding Language Referencing ORS 198.190**

WHEREAS, ORS 198.190 Compensation and Expenses of Governing Body Members states a member of the governing body of a district may receive and amount not to exceed \$50 for each day or portion thereof as compensation for services performed as a member of the governing body; and,

WHEREAS, the Western Lane Fire and EMS Authority Board of Directors reviewed and considered this statute at the September 28, 2023 Board Meeting, but the majority of Board Members were not in favor of adopting the \$50 a day compensation into Board policies,

THEREFORE, BE IT RESOLVED, Section 107.20 will be added to Lexipol Policy 107 with the following language:

The Board of Directors will not receive any monetary compensation according to ORS 198.190 for services performed as a member of the governing body.

Adopted on this 21st day of December 2023.

By: _____
Jim Palisi, WLFEA Board President

Attest: _____
Linda Stent, WLFEA Board Secretary/Treasurer

WESTERN LANE AMBULANCE DISTRICT

RESOLUTION NO. 2023-05

**A RESOLUTION ADJUSTING THE BUDGET FOR FISCAL YEAR 2023-24
BY ADOPTING A SUPPLEMENTAL BUDGET**

WHEREAS, all expenses for FY23-24, other than Capital Outlay, are being paid by Western Lane Fire and EMS Authority with the transfer of funds from Siuslaw Valley Fire & Rescue and Western Lane Ambulance District; and,

WHEREAS, Western Lane Ambulance District has appropriations budgeted for LifeMed expenses, but nothing budgeted to pay Property & Casualty Insurance premiums; and,

WHEREAS, Special Districts Association of Oregon Underwriting has stated that Property & Casualty Insurance premiums must be paid by the district; and,

WHEREAS, this expenditure was not budgeted for Fiscal Year 2023-24 and therefore requires a Supplemental Budget in accordance with Local Budget Law; and,

WHEREAS, the Supplemental Budget does not adjust the General Fund by more than 10% so a public hearing is not required,

THEREFORE, BE IT RESOLVED, RESOLVED by the Board of Directors of Western Lane Ambulance District that a supplemental budget is adopted.

INCREASING APPROPRIATIONS

<u>Program</u>	<u>Current</u>	<u>Change</u>	<u>Revised Budget</u>
EMS Operations	\$ 183,000	\$ 30,000	\$ 213,000
<u>Not Allocated to Organizational Unit or Program</u>			
Transfers WLFEA	\$6,206,973	(\$ 30,000)	\$6,176,973
Transfers Crisis Response	\$ 5,000		\$ 5,000
Transfers Capital Reserves	\$ 310,000		\$ 310,000
Contingency	\$ 100,000		\$ 100,000
Total Appropriations, All Funds	\$6,804,973		\$6,804,973
Total Unappropriated and Reserve Amounts, All Funds	\$ 209,221		\$ 209,221
TOTAL ADOPTED BUDGET	\$7,014,194		\$7,014,194

Adopted on this 21st day of December 2023.

By: _____
Cindy Russell, WLAD President

Attest: _____
Vanessa Buss, WLAD Secretary/Treasurer



2024 SDAO ANNUAL CONFERENCE

FEBRUARY 9-11 | SEASIDE, OREGON

PRE-CONFERENCE: FEBRUARY 8



REGISTER NOW!
<https://cvent.me/XRYXZr>

YOUR OFFICIAL INVITATION TO JOIN US

It's time to register for the **2024 SDAO Annual Conference** at the beautiful Seaside Civic and Convention Center in Seaside, Oregon!

Our annual conference is the can't-miss event of the year for special district representatives. Whether you are a board member, manager, staff person, volunteer – or someone who works with special districts, we have something for you. From 20 educational sessions and multiple opportunities for interacting with colleagues through business meetings, caucus meetings, networking receptions and more, you will want to be sure to join us from February 9th - February 11th.

REGISTRATION RATES

Thank you to our sponsors who continue to help us keep the conference affordable for members! We have been able to keep the same rates for over ten years with your generosity.

- **Pre-Conference:** \$85 Full Day, \$50 Half-Day
- **One Day Only (Friday or Saturday):** \$140
- **Full Conference (Thursday Evening-Sunday Morning):** \$230

HOW TO REGISTER

Registration is now open and available online through our conference registration website.

Please visit <https://cvent.me/XRYXZr> to register and for more information including session descriptions, speaker information, and more. Limited onsite spots are available so we encourage you to register soon.

Please contact **SDAO Member Services at 800-285-5461** or memberservices@sdao.com with any questions or concerns.

GUEST MEAL RATES

If you would like to bring a guest to conference meals only (guests that would like to attend sessions will need to register for the conference as an attendee), please see below for meal prices:

- Friday Breakfast: \$23.50
- Friday Lunch: \$29.50
- Saturday Breakfast: \$23.50
- Saturday Lunch: \$29.50
- Saturday Awards Banquet and Entertainment: \$50 (includes entertainment and two drink tickets)
- Sunday Breakfast: \$23.50



SCOTT ANDERSON: ILLUSIONIST

Filled with extraordinary magic, hilarious comedy, tons of audience participation, and impossible illusions, your amazement is guaranteed! The performances you will see are one of a kind as they are all based upon his own life. Best of all, this is for all ages. The illusion show is a combination of classic and modern illusion. You will see some of the latest mind-boggling effects as well as illusions inspired by the likes of Harry Houdini.

HOTEL INFORMATION

Best Western Plus Ocean View Resort | 414 N Prom

Rates range from \$110-270/night + tax

Book by Phone: 800-234-8439 and press "0".

Book Online: <https://tinyurl.com/4j2rxjpy>.

Rivertide Suites | 102 N Holladay

Rates range from \$139-229/night + tax

Book by Phone: 877-871-8433

Inn at Seaside | 441 2nd Ave

WED - THURS rates range: \$84-118/night + tax

FRI - SAT rates range: \$140-180/night + tax

Book by Phone: 503-738-9581

Holiday Inn Express & Suites | 34 N Holladay Dr

WED - THURS rate: \$140/night + tax

FRI - SAT rates: \$170/night + tax

Book by Phone: 503-717-8000



BOARD MEMBER ELECTIONS

FIRE

Ben Stange, Polk County Fire District #1

IRRIGATION

Brent Stevenson, Santiam Water Control District

SANITARY

Nick Bakke, Rogue Valley Sewer Services

AT-LARGE (TRUE)

Meg Spencer, Siuslaw Public Library District

AT-LARGE (BIG SIX DISTRICTS)*

Scott Stanton, Umatilla County Fire District #1

AT-LARGE (BIG SIX DISTRICTS)*

Adam Denlinger, Seal Rock Water District

Board members are elected for two-year terms extending from July 1, 2024 through June 30, 2026.

**Big six districts are fire, irrigation, park and recreation, port, sanitary and water*



REGISTER NOW!
<https://cvent.me/XRYXZr>

Keynote Speaker: Betsy Allen-Manning

PEOPLE SAVVY - IMPROVE COMMUNICATION, BUILD BETTER RELATIONSHIPS & DEAL WITH DIFFICULT PEOPLE

Studies show that 85% of your success in life is due to your people skills, yet it's one of the most difficult skills to develop. In this highly interactive & hilarious presentation, Betsy takes you through an engaging experience of how different personalities prefer to communicate, connect, be influenced, make decisions & resolve conflict. As a human behavior expert, Betsy breaks down personality styles in a humorous and easy way to understand so you can work better with others and get the results you want.

ACTIONABLE TAKEAWAYS:

- Get strategies for increasing your emotional intelligence & dealing with difficult people.
- Quickly identify someone's personality, preferences, and peeves, and leverage that knowledge to build stronger relationships, enhance service & reduce conflict with others.
- Discover strategies for common communication issues so you can adapt to get better results with people.
- Learn how each personality style is specifically motivated, and how they prefer to be influenced and make decisions.

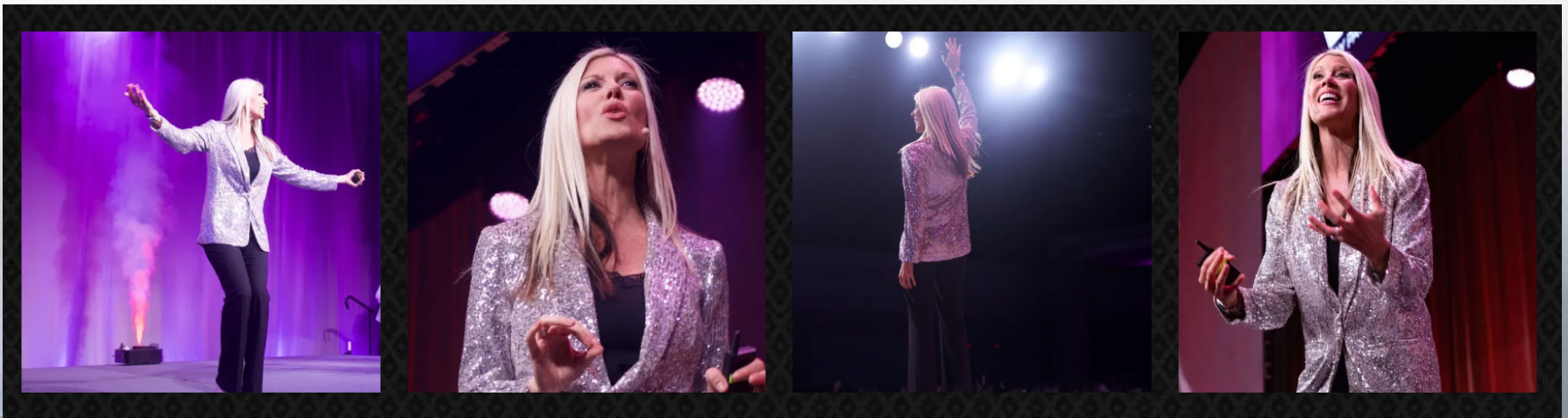
Featured on FOX, CBS, ABC, NBC & TEDx, Betsy Allen-Manning is a renowned leadership speaker & corporate culture expert for fast growing companies. As founder of Corporate Culture Training Solutions, known as one of the top leadership training companies in Dallas, Texas, her specialty is improving workplace culture, creating better employee experiences, & developing



'ready-now leaders' who are equipped to attract, engage, motivate & retain talent in a hyper-competitive marketplace. She's the author of 3 published books and is one of the top leadership motivational speakers in Dallas. Through her dedicated research, expertise in human behavior, experience working as a manager for 5-star hotels, and her involvement with the John Maxwell Team, she is honored to have trained over 15,000 leaders & teams for small businesses, franchises & associations, to multi-billion dollar corporations, such as Toshiba, Aflac, Fidelity & the US Department of Defense.

Betsy has worked quite a bit with government agencies and associations, including the following...

- The US Department of Defense & DAU
- NAVWAR & The Navy
- State Conference for Washington County Officials & Texas County Officials
- WINGA (Wisconsin National Guard Association)
- And many more!



REGISTER NOW!
<https://cvent.me/XRYXZr>

PRE-CONFERENCE - THURSDAY, FEBRUARY 8, 2024

TIME	SESSION TITLE	SPEAKER(S)
9a-3:30p	Board Duties, Responsibilities, and Liabilities	Eileen Eakins
930a-3p	Board Relations, Conflict Resolution and Acceptable Conduct	George Dunkel, SDAO
1p-4p	Filing Audit and Budget Reports	Matt Apken, Merina+Co
9a-12p	Grants - How to Find Them, How to Apply, Best Practices	Bob Irvine, PARC Resources
5p-6:30p	Welcoming Reception	

FRIDAY, FEBRUARY 9, 2024

TIME	SESSION TITLE	SPEAKER(S)
7a	5k Fun Run/Walk	
7:30a-830a	BREAKFAST	
8:30a-10a	Opening Session and Keynote Speaker	Betsy Allen-Manning
10:30a-12p	District Elections: The Basics and How to Be Successful	Lydia Plukchi, Oregon Elections Division
	Cybersecurity: How to Take Basic Steps and Use Resources	Cinnamon Albin, State of Oregon + Panel
	Succession Planning for Your Board and Staff	Bob Keefer, SDAO
	Communication - Telling Your District's Story	Mac Clemmens, Streamline
12p-1:30p	LUNCH	
1:30p-3p	Special District Restructuring and Consolidation	Jake Weigler, Praxis
	Fraud Prevention	Rob Moody
	Paid Leave Oregon	Laurie Grenya, HR Answers
	AI Trends and Special Districts	Mac Clemmens, Streamline
3:15p-5p	Caucus Meetings	
5p-6p	Exhibitor Reception	

SATURDAY, FEBRUARY 10, 2024

TIME	SESSION TITLE	SPEAKER(S)
7a	5k Fun Run/Walk	
7:30a-830a	BREAKFAST	
8:30a-10a	Managing a District with Few or No Employees	MaryKay Dahlgreen, SDAO
	SDAO/SAIF Service Group - Learn about New Requirements and Opportunities	Mike Jacobs, SDAO, Brittany Johnston, SAIF, and Stephanie Eakin, SAIF
	Performance Management/Having Difficult Conversations/ Disciplinary Action	Spencer Rockwell, SDAO
	How to Make the Most of Your SDAO Membership	SDAO Team
10:30a-12p	Public Meetings, Records, and Retention Requirements	Mark Wolf and Emily Guimont, Local Government Law Group
	The Risk Management Process	Niki Fisher, Troy DeYoung, Brad Eastman, Greg Jackson, & Kevin Jones, SDAO
	Sexual Harassment in the Workplace	Teri Dragoo and McKenzie Nix, SDAO
	Running Successful Hybrid Meetings	Deborah Jeffries, HR Answers
12p-1p	LUNCH	
1p-2:15p	How to Keep You and Your Board Out of Trouble and Out of the Press	George Dunkel, SDAO
	From Idea to Action: Launching Your First Tabletop Exercise	Meghan Howk and Jason Jantzi, SDAO
	Discrimination Case Studies	Ron Downs, SDAO
	Mental Health Resources	TBD
2:30p-3:45p	Legislative General Session	Hasina Wittenberg, Mark Landauer, SDAO and Cole Arreola-Karr, NSDC
4p-5p	Annual Business Meeting	
6p-10p	Awards Banquet & Entertainment	Scott Anderson

SUNDAY, FEBRUARY 11, 2024

8a-9a	Breakfast & Raffle Drawing	
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REGISTER NOW!
<https://cvent.me/XRYXZr>

S | D | A | O Special Districts
Association of Oregon



**2024 ANNUAL
CONFERENCE**

Western Lane Fire and EMS Authority



Job Description

TITLE: Client Advocate

EFFECTIVE: 01/01/2023

REPORTS TO: WLCR Program Manager

REVISED:

SALARY RANGE: Part time hourly / Stipend

CIVIL SERVICE CLASSIFICATION: Exempt

REPRESENTATION: NA

JOB SUMMARY

Under the immediate supervision of the Western Lane Crisis Response (WLCR) Manager, the WLCR Client Advocate team member is responsible for responding to and providing resources to persons experiencing mental health episodes, suicidal thoughts, homeless issues, and other emergency situations which does not require law enforcement or pre-hospital EMS intervention. WLCR Client Advocates may also assist police with death notification, provide crisis intervention and resources to families who have lost their home to fire, or provide grief support to family members who have just lost a loved one. WLCR Client Advocates also provide support and resource assistance to members of our Fire, EMS, law enforcement communities and their families.

Client Advocates are responsible for following up on WLCR calls and providing continued education, support and/or additional resources. Client Advocates will also provide clerical support in the completion of call documentation and the upload of incident information into Measures and Outcomes Tracking System (MOTS). Advocates may be required to assist the WLCR Program Manager and Assistant Manager with scheduling, team meetings, fulfilling grant requirements i.e., community presentations and trainings.

ESSENTIAL JOB FUNCTIONS

- Respond to incidents to provide assessment, crisis intervention, and support to clients within Western Lane County. Examples include suicidal subjects, acute mental health episodes, homeless individuals, family disputes, requests for welfare checks, as well as assist with fire, crime, medical emergencies, and natural/manmade disasters.
- In cases of suspected child, elder or domestic abuse, verbally report to law enforcement or the appropriate county agency and complete the abuse reporting.
- Provide resource information to those in need.

- Document all WLCR calls.
- Update MOTS and MHS25 of all WLCR and follow up calls.
- Track all follow up calls in the WLCR follow up log.
- Attend and Assist with WLCR Team meetings twice a month.
- Attend case reviews with WLFEA crew members when requested.
- Attend quarterly WLCR trainings.
- Attend Association Meetings at least four times per year.
- Provide clear communication of client status with the next shift Client Advocate.
- Meet weekly to communicate and update WLCR Manager of client status and relevant information.
- Respond to texts, phone calls and email communications from other WLCR Members including the WLCR Manager.
- Be a point of contact for questions from community members, local agencies, dispatch, law enforcement, and Fire/EMS.
- Promotion of the WLCR program which could entail visiting businesses and distributing WLCR flyers.
- Educating the public on the purpose of the WLCR program.
- Maintain cleanliness and inventory of WLCR vehicles.
- Maintain and update resources for team members and client advocates.
- Maintain and update client advocate training binder.
- A willingness to work tactfully and respectfully with people in crisis regardless of their race, religion, sexual orientation, or lifestyle choices.
- Other duties as assigned.

REQUIRED EDUCATION, DEGREES, CERTIFICATES, AND/OR LICENSES

- High School Diploma or equivalent.
- One year experience working in medical or social services or with disadvantaged individuals.
- Candidate must have a current Oregon Driver's License or obtain one within four months from date of hire.
- Must meet minimum training and performance requirements and complete WLCR Academy.
- Obtain Community Health Worker (CHW) or Qualified Mental Health Associate (QMHA) certification within 12 months of hire date.
- Professional dress (WLCR clothing will be provided) is to be worn whenever on duty and when working in the office.

PREFERRED EDUCATION, DEGREES, CERTIFICATES, AND/OR LICENSES

- Associates Degree or higher is desirable
- Experience in counseling, crisis work, or previous work as an emergency responder

EQUIPMENT

Operates office equipment, such as computers and software, calculator, copy machine, scanner, shredder, fax machine, and multi-line telephone.

PHYSICAL REQUIREMENTS

The physical demands and work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job.

- Employee may be required to lift-up to 25lbs, ambulate on uneven terrain, remain standing or walking for 1-2 hours at a time, and sit for long periods of time.
- Must have the ability to respond to emergency calls at all hours of the night, sometimes in challenging weather and/or under other stressful conditions.

CONDITIONS OF EMPLOYMENT

Candidate must agree to and pass a background check, a DMV check, and pre-employment drug screen.

RESIDENCY REQUIREMENTS

At this time there are no residency requirements for this position, but the Client Advocate must be able to arrive on scene within 30 minutes of notification.

The examples of duties are intended only as illustrations of the various types of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

The job description does not constitute an employment agreement between the Client Advocate and the Authority. This job description is subject to change by the Fire and EMS Chief as needed.

WESTERN LANE FIRE & EMS AUTHORITY	SECTION NUMBER:
OPERATIONS AND PROCEDURES MANUAL	EFFECTIVE DATE:
DIVISION TITLE: ADMINISTRATIVE POLICIES – JOB DESCRIPTIONS	REVISION DATE:
SECTION TITLE: FULL TIME ADMINISTRATIVE ASSISTANT	REVIEWED DATE:

Classification: Non-Exempt Hourly

JOB SUMMARY: Under the direction of the Fire & EMS Chief and the immediate supervision of the Office Manager, provides administrative support in preparing financials, human resources, and general administration for Western Lane Fire & EMS Authority (WLFEA), Siuslaw Valley Fire and Rescue (SVFR), and Western Lane Ambulance District (WLAD).

EXAMPLES OF DUTIES:

Administration:

- Provides receptionist duties at the front desk and switchboard, opens and distributes daily mail, issues burn permits/address signs.
- Performs Recording Secretary duties: posts public meeting notices, assists in preparing board meeting agendas, minutes, and packets.
- Provides support to district staff including correspondence, reports, monthly newsletters; arranges group functions, meetings and meals when needed.
- Updates district web sites and media with notices and other documents.
- Purchases office supplies.
- Coordinates IT repairs with IT Service Provider.
- Prepares the input of data, deposits, and mailings for the annual LifeMed program.
- May perform Administrative Assistant duties for Western Lane Emergency Operations Group (WLEOG), including preparation of minutes and packets.
- Updates policy manuals and TeamRescue.

Financials:

- Enters daily accounts payable, accounts receivable and credit card transactions.
- Assists Office Manager in preparation of annual budgets and audits.
- Enters transactions into financial software and prepares weekly bank deposits.
- Assists with monthly bank statement and credit card reconciliations.

Human Resources:

- Assists in the onboarding of new hire employees.
- Maintains personnel, medical and training files.

- Enrolls employees in health/dental/life insurance, deferred comp (VALIC & VOYA), HRA VEBA, Pacific Source, AFLAC programs.
- Receive Fire Logs from Dispatch, input Target Solutions/Incident/Drill reports.
- Prepare monthly payroll, coordinate payroll deductions (medical insurance, union/association dues, deferred comp, garnishments).
- Enters PERS for eligible employees following payroll.
- Assist Recruit/Retention with auxiliary, volunteers, and update workers comp.
- Assist employees with changes in their personal or payroll status, programs, and other needs.

MINIMUM QUALIFICATIONS

EDUCATION and/or EXPERIENCE: Minimum of a High School Diploma. Associates degree or higher is desirable. Any combination of work experience and education which provides the required level of knowledge and abilities may be considered.

KNOWLEDGE, SKILLS & ABILITIES: To perform the job successfully, an individual should demonstrate the following:

- Responds promptly to customer needs, requests for service and assistance.
- Ability to communicate effectively in English in oral and written form. Speaks clearly and persuasively in positive or negative situations.
- Maintains a positive attitude under stressful conditions. Ability to perform work for a number of individuals and handle interruptions and adjustments to priorities throughout the day.
- Follows district policies and procedures.
- Ability to maintain strict confidentiality.
- Plans, organizes and prioritizes work. Completes administrative tasks correctly and on time.
- Have sound knowledge and ability in business correspondence, the ability to proofread grammar, spelling, and punctuation with a high degree of accuracy.
- Have broad knowledge of office equipment related to the functions and operations of an administration office.
- Ability to operate a personal computer and knowledge of word processing, spreadsheet, and database software. Ability to navigate and utilize the Internet.

PHYSICAL DEMANDS & WORK ENVIRONMENT: The physical demands and work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Employee may be required to lift up to 25lbs to perform the job duties.

Requirements: Candidate must sign a contract with the Authority agreeing to be a non-tobacco user. Candidate must have or obtain an Oregon Driver's License and be insurable by the Fire District. Candidate must agree to and pass a background check.

Western Lane Fire and EMS Authority



Job Description

TITLE: Firefighter/EMT **EFFECTIVE:** July 1, 2022

REPORTS TO: Company Officer **REVISED:**

SALARY RANGE: Per Collective Bargaining Agreement

CIVIL SERVICE CLASSIFICATION: Firefighter/EMT

REPRESENTATION: Career Firefighters are represented by IAFF Local 851

JOB SUMMARY

Under general supervision, performs specialized firefighting work involving driving, operation and maintenance of fire and EMS apparatus and equipment; responds to alarms and provides emergency medical treatment to sick and injured patients, including ambulance transport and interfacility transfers; fights fires and assists in the protection of life and property; participates in fire prevention work, necessary training and public education, and does other related work as needed or assigned.

ESSENTIAL JOB FUNCTIONS

Responds to alarms with assigned company; lay and connect hose; operate pumping apparatus; operate nozzles and direct water streams; place, raise, and climb ladders; ventilate burning structures; enter burning buildings to evacuate known occupants; respond to emergency rescue calls including auto accidents, gas system leaks, wildland and structural fires, search and rescue, sand dunes and water incidents; operate necessary equipment and perform essential functions of firefighting such as fire attack, forcible entry, auto extrication, rescue, ventilation, salvage, and overhaul; detect and preserve evidence at a fire scene and participates in determining origin; respond to emergency medical incidents, perform patient assessment, administer necessary treatments, provide ambulance transport as needed and continuation of care; respond to hazardous materials incidents, secure scene and hazardous material identification, participate in mitigation activities; participate in fire and medical drills; perform related duties and responsibilities as required; maintain integrity and demonstrate courteous and cooperative behavior when interacting with elected officials, the public, and staff; promote an effective and cooperative workplace environment.

REQUIRED EDUCATION, DEGREES, CERTIFICATES, AND/OR LICENSES

Graduation from high school or a valid GED.

The following NFPA, IFSAC, Oregon DPSST, or NWCG certifications must be currently held or obtained within the first year following promotion or hire:

- Firefighter I
- Firefighter II
- Hazardous Materials Operations
- Driver Operator
- Driver Operator Pumper
- NWCG Firefighter Type 2

Other required classes (equivalent certifications may be considered):

- NIMS 100, 200, 700, 800

Minimum of an Oregon Health Division EMT-Basic certification; Nationally Registered EMT-Basic (Preferred).

Associates Degree in Fire Science, EMS, or a related field from an accredited college or a minimum of twenty-five credit hours from an accredited college towards a related field of study (Preferred).

Experience in ALS transport or as a firefighter in a comparable agency (Preferred).

Possess and maintain a valid Oregon Driver's License.

EQUIPMENT

Operates office equipment, such as computers and software, calculator, copy machine, scanner, shredder, fax machine, and multi-line telephone.

CONDITIONS OF EMPLOYMENT

New hires from outside the organization:

- Pass a Criminal Background and Reference Check.
- Successful completion of the Authority Physical Ability Exam or current CPAT certificate.
- Successful completion of a medical physical exam in accordance with NFPA 1582.
- Pass Pre-Employment Drug Screening.

The examples of duties are intended only as illustrations of the various types of work performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

The job description does not constitute an employment agreement between the firefighter and the Authority. This job description is subject to change by the Fire and EMS Chief as needed.

Personal Appearance Standards

1027.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality, members shall maintain their personal hygiene and appearance to ensure a professional image appropriate for this authority and for their assignment.

The procedures contained herein are intended to promote uniformity of the members of the Authority by addressing specific grooming items. However, nothing herein shall limit the authority's ability to address any other grooming or personal appearance issues that may be deemed improper for members of the Authority.

1027.2 GROOMING STANDARDS

The following appearance standards shall apply to all members except those whose current assignment would deem them not appropriate or where the Fire & EMS Chief or the authorized designee has granted an exception.

1027.2.1 PERSONAL HYGIENE

All members must maintain proper personal hygiene. Examples of improper personal hygiene include but are not limited to dirty fingernails, bad breath, body odor, and dirty or unkempt hair. Any member who has a condition due to a protected category (e.g., race, physical disability) which affects any aspect of personal hygiene covered by this policy may qualify for an accommodation and should report any need for an accommodation to a supervisor or the Administration Division.

1027.2.2 HAIR

The hairstyle of all members shall be neat in appearance. Hair must be no longer than the horizontal level of the bottom of the uniform patch when the member is standing erect. Hairstyles that extend below the top edge of the uniform collar should be secured in a tightly wrapped braid or ponytail.

1027.2.3 MUSTACHES

A short and neatly trimmed mustache may be worn. Mustaches shall not extend below the corners of the mouth or beyond the natural hairline of the upper lip.

1027.2.4 SIDEBURNS

Sideburns shall not extend below the bottom of the ear and shall be trimmed and neat.

1027.2.5 BEARDS AND GOATEES

Beards, goatees, or any hair on the chin or near the bottom lip is prohibited.

1027.2.6 FACIAL HAIR

Facial hair other than sideburns, mustaches, and eyebrows shall not be worn, unless authorized by the Fire & EMS Chief or the authorized designee.

Personal Appearance Standards

1027.2.7 COSMETICS

Members are permitted to wear cosmetics of conservative color and amount.

1027.2.8 FINGERNAILS

Fingernails extending beyond the tip of the finger can pose a safety hazard to members working in the field. For this reason, fingernails shall be trimmed so that no point of the nail extends beyond the tip of the finger.

1027.2.9 JEWELRY AND ACCESSORIES

No jewelry or personal ornaments shall be worn by members on-duty on any part of the uniform or equipment, except those authorized within this manual. Members should be mindful of wearing jewelry that can become snagged or caught during performance of fire suppression duties.

- Necklaces or jewelry, worn around the neck, shall not be visible above the shirt collar.
- It is recommended that members refrain from wearing rings while assigned to suppression.

1027.3 TATTOOS

~~At no time will tattoos on the arms below the elbow be visible while on-duty. Any tattoo, brand, or mutilation on the head, neck, scalp, face, or hand must be covered by way of a uniform, business attire, or neutral-colored skin patch while on-duty.~~ Tattoos, brands, or mutilations that are inappropriate, as determined at the sole discretion of the Fire & EMS Chief, must **also** be covered. Inappropriate marks may include but are not limited to marks that exhibit or advocate discrimination; marks that promote or express gang, supremacist, or extremist group affiliation; and marks that depict or promote drug use, sexually explicit acts, or other obscene material.

1027.4 BODY PIERCING OR ALTERATION

Except for a single-stud pierced earring worn in the lobe of each ear, no body piercing shall be visible while any member is on-duty or representing the Authority in any official capacity.

Alteration to any area of the body visible in any authorized uniform or attire that is a deviation from normal anatomical features and which is not medically required is prohibited. Such body alteration includes but is not limited to:

- (a) Tongue splitting or piercing.
- (b) The complete or trans-dermal implantation of any material other than hair replacement.
- (c) Abnormal shaping of the ears, eyes, nose, or teeth.
- (d) Branding or scarification.

1027.5 RELIGIOUS ACCOMMODATION

The religious beliefs and needs of authority members should be reasonably accommodated. Requests for religious accommodation should generally be granted unless there is a compelling

Personal Appearance Standards

security or safety reason and denying the request is the least restrictive means available to ensure security or safety. The Fire & EMS Chief should be advised any time a request for religious accommodation is denied.

Those who request to wear headscarves, simple head coverings, certain hairstyles, or facial hair for religious reasons should generally be accommodated absent unusual circumstances.

1027.6 EXEMPTIONS

Members who seek cultural (e.g., protected hairstyle) or other exemptions to this policy that are protected by law should generally be accommodated (ORS 659A.001; ORS 659A.030). A member with an exemption may be ineligible for an assignment if the individual accommodation presents a security or safety risk. The Fire & EMS Chief should be advised any time a request for such an accommodation is denied or when a member with a cultural or other exemption is denied an assignment based on a safety or security risk.

Internal Controls

113.1 PURPOSE AND SCOPE

Internal controls are absolutely necessary for maintaining a secure and reliable accounting system. Internal controls, when strictly followed, can protect the financial integrity of the District records and protect against mismanagement of District Funds.

113.2 POLICY

113.2.1 DEPOSITS

All deposits of the District funds shall be made by the Administration Staff and reviewed by the Office Manager.

113.2.2 COMPUTER RECORD SECURITY

Passwords to access the Authority's computers accounting system shall only be issued to the Administrative Staff and the Fire & EMS Chief. All accounting records shall be backed-up on a daily basis.

113.2.3 MONTHLY FINANCIAL REVIEW

The Board of Directors shall, at the monthly Board meeting, review the monthly financial reports and transaction register for their District and supervised by the Office Manager. The Board of Directors will appoint a designee to review the monthly bank statements and reconciliations.

113.2.4 PURCHASES

Expense Forms are required on all purchases and must be signed by the Fire & EMS Chief, Operations Chief, or Finance Manager. Signatory authority can be transferred to an appointed designee with the approval of the Fire & EMS Chief.

113.2.5 VERIFICATION OF RECEIPTS

No invoice shall be paid without proof that the District has received the goods or services stated on the invoice. If no written proof exists, the Authority shall request written proof of purchase from the issuer of the invoice.

113.2.6 CASH TRANSACTIONS

Duties will be assigned to individuals in such a manner that no one individual can control all phases of collecting cash, recording cash, and processing any transaction in a way that permits errors or omissions to go undetected.

113.2.7 AUTHORIZATION FOR WRITING-OFF BAD DEBT

Authorization for writing-off bad debt shall be given to the Fire & EMS Chief. The Authority Board of Directors shall approve any write-off over the amount of \$2,500.00.

Internal Controls

113.2.8 PETTY CASH

Expenditure of petty cash funds shall require an Expense Form with full documentation, including the purpose of the expenditure and the name of the person being paid out of the petty cash funds if applicable.

113.2.9 CHECK SIGNING - MULTIPLE SIGNATURES

All checks require two signatures to be valid for payment. The Fire & EMS Chief and members of the Board of directors shall sign and co-sign all checks.

Financial Management

114.1 PURPOSE AND SCOPE

To preserve capital through prudent banking and cash management, to achieve the most productive use of cash, minimize operating costs and to control receipts and disbursements. To maintain competitive and good working relations with financial institutions and to ensure that all financial systems, functions, and controls meet generally accepted audit standards.

114.2 POLICY

114.2.1 BANKING SERVICES

Banking services shall be solicited at least every five years on a competitive bid basis. Banks submitting proposals must meet the following criteria:

- Must be able to provide Collateral Pool Certificates.
- Must be insured by the Federal Deposit Insurance Corporation.
- Must be able to facilitate funds transfers to and from the Local Government Investment Pool managed by the Oregon State Treasurer.
- Must provide annual audited financial statements.
- All District bank accounts must be authorized and approved by the Fire & EMS Chief.

114.2.2 ACCOUNTS RECEIVABLES

An account receivables aging schedule will be prepared on a monthly basis. This will be monitored by the Fire & EMS Chief to ensure the accounts due the District are being pursued in a timely fashion.

114.2.3 ACCOUNTS PAYABLE

Invoices will be analyzed to take advantage of any discounts available. The Fire & EMS Chief prior to payment being made will review all financial obligations of the District.

114.2.4 DEBT

If feasible, the District may enter into long-term lease obligations or issue Bonds to finance capital acquisitions upon approval of the Board of Directors. Before issuing any debt, the District will consult with the appropriate financial advisors. All leases as reported in the District's annual financial report will be limited as follows:

- Annual leases will be limited to the economic life of the equipment or facilities to be purchased and in no case shall be extended beyond twenty (20) years or otherwise unless authorized by the Oregon Revised Statutes.
- Lease purchases of equipment and facilities will be limited to fit within the District's stated mission, goal or governmental role.
- All lease purchase payments must be included in the District's approved budget.

Financial Management

114.2.5 AUDITS / AUDITORS

The Authority will conduct an annual audit at the end of the fiscal year. Authority employees are to cooperate with auditors regarding any records requests maintained for or by the District.

114.2.6 AUTHORIZED PERSONNEL / SECURITY

The Fire & EMS Chief or the President of the Board of Directors is authorized to open upon demand deposit accounts as may be required by the District. Checks written by the District require two signatures to become valid. Petty Cash and checks are to be secured in a lockedfile cabinet at all times. The Fire & EMS Chief is responsible for maintaining current signature cards with the appropriate financial institutions.

PUBLIC CONTRACTING RULES

2023

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PUBLIC CONTRACTING RULES 2023

DIVISION 46

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

137-046-0100

Application; Federal Law Supremacy

(1) These Public Contracting Rules (Rules) set forth the rules of procedure for Public Contracting of Contracting Agencies subject to these Rules. These Rules consist of the following four divisions:

- (a) This division 46, which is applicable to all Public Contracting;
- (b) Division 47, which describes procedures for Public Contracting for Goods or Services, as defined in ORS 279B.005;
- (c) Division 48, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and
- (d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) In the event of conflict between rules in this division 46 and rules in divisions 47, 48 and 49, the rules in divisions 47, 48 and 49 take precedence over the rules in this division 46.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these rules, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.

(4) These division 46 rules become effective upon adoption, and apply to Public Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & ORS 279A.065

137-046-0110

Definitions for the Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Rules will have the meaning set forth in the division of the Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined there, the meaning set forth in the Code. The following terms, when capitalized in these Rules, shall have the meaning set forth below:

- (1) **“Addendum”** or **“Addenda”** means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.
- (2) **“Award”** means, as the context requires, either the act or occurrence of the Contracting Agency’s identification of the Person with whom the Contracting Agency will enter into a Contract following the resolution of any protest of the Contracting Agency’s selection of that Person, and the completion of all Contract negotiations.
- (3) **“Bid”** means a written response to an Invitation to Bid.
- (4) **“Closing”** means the date and time announced in a Solicitation Document as the deadline for submitting Offers.
- (5) **“Code”** means the Public Contracting Code, as defined in ORS 279A.010.
- (6) **“Competitive Range”** means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with Rules 137-047-0262 or 137-049-0650.
- (7) **“Contract”** means a contract for sale or other disposal, or a purchase, lease, or other acquisition, by a Contracting Agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. “Contract” does not include grants.
- (8) **“Contract Price”** means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.
- (9) **“Contracting Agency”** means a public body authorized by law to conduct a procurement. “Contracting Agency” includes any person authorized by a Contracting Agency to conduct procurements on the Contracting Agency’s behalf.
- (10) **“Contract Review Authority”** means the Local Contracting Agency’s Local Contract Review Board determined as set forth in ORS 279A.060.

- (11) **“Contractor”** means the Person with whom a Contracting Agency enters into a Contract.
- (12) **“DBE Disqualification”** means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.
- (13) **“Descriptive Literature”** means the Offeror's materials submitted to provide information concerning the products or services available in response to a Solicitation Document.
- (14) **“Electronic Advertisement”** means notice of a Contracting Agency's request for Offers, request for quotes, request for information or other document inviting participation in the Contracting Agency's Procurements available over the Internet via (a) the World Wide Web or some other Internet protocol; or (b) a Contracting Agency's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
- (15) **“Electronic Offer”** means a response to a Contracting Agency's request for Offers or request for quotes submitted to a Contracting Agency via email or through the Contracting Agency's Electronic Procurement System.
- (16) **“Electronic Procurement System”** means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.
- (17) **“Goods and Services”** or **“Goods or Services”** has the meaning set forth in ORS 279A.010(1)(j).
- (18) **“Invitation to Bid”** or **“ITB”** means all documents used for soliciting Bids in accordance with either ORS 279B.055, or 279C.335.
- (19) **“Offer”** means a written response to a Solicitation Document.
- (20) **“Offeror”** means a Person who submits an Offer.
- (21) **“Opening”** means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- (22) **“Person”** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity that has the legal capacity to enter into a contract.
- (23) **“Personal Services”** means the services or type of services performed under a Personal Services Contract.
- (24) **“Personal Services Contract”** or **“Contract for Personal Services”** means a contract primarily for the provision of services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers, unless specifically exempt from the Code. For any single contract or class of contracts, the Contracting Agency shall have the discretion to determine whether additional types of services not specifically mentioned in this definition are personal services.
- (25) **“Product Sample”** means a representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.
- (26) **“Proposal”** means a written response to a Request for Proposals.
- (27) **“Request for Proposals”** or **“RFP”** means all documents used for soliciting Proposals in accordance with ORS.279B.060, 279C.110 or Rule 137-049-0650.
- (28) **“Responsible Offeror”** (also, **“Responsible Bidder”** or **“Responsible Proposer,”** as applicable) means a Person that has submitted an Offer and meets the standards set forth in Rules 137-047-0640 or 137-049-0390(2), and that has not been debarred or disqualified by the Contracting Agency under Rules 137-047-0575 or 137-049-0370. When used alone, **“Responsible”** means meeting the aforementioned standards.
- (29) **“Responsive Offer”** (also, **“Responsive Bid”** or **“Responsive Proposal,”** as applicable) means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, **“Responsive”** means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
- (30) **“Signed”** or **“Signature”** means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.
- (31) **“Solicitation Document”** means an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or ORS Chapter 279C.
- (32) **“Specification”** means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(33) **“Work”** means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.

(34) **“Written”** or **“Writing”** means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-046-0120

Policy

Contracting Agencies subject to the Code shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.015 & ORS 279A.065

137-046-0130

Application of the Code and Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all rights, powers and authority related to Public Contracting in accordance with the Code and these Rules.

(2) Neither the Code nor these Rules apply to the contracts or the classes of contracts described in ORS 279A.025(2).

(3) Contracting Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program pursuant to ORS 279A.180 without following the procedures set forth in ORS 279B.050 through ORS 279B.085.

(4) Contracting Agencies otherwise subject to the Code and these Rules may enter into contracts for Goods or Services with non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200 through ORS 279A.225, or ORS 279B.050 through ORS 279B.085. However, Contracting Agencies must enter into such contracts in accordance with any applicable administrative rules promulgated by the Department of Administrative Services.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.050, ORS 279A.055, ORS 279A.065 & ORS 279A.180

MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

137-046-0200

Affirmative Action; Limited Competition Permitted

(1) Pursuant to ORS 279A.100, a Contracting Agency may limit competition on Public Contracts for Goods and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the Public Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & ORS 279A.100

137-046-0210

Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) As set forth in ORS 279A.105, a Contracting Agency may require a contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.

(2) A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The contractor certifies in writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture the goods or complete the services under the contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a contractor's subcontractor's employees or subcontractors constitute a substantial number.

(3) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a business that a veteran, as defined in ORS 200.005, owns.

(4) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any public contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (d) and (e) of this section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely request. The Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(d) Notice of Disqualification. The Contracting Agency shall provide Written notice of the Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service, or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

(5) **Contract and Subcontract Conditions**. If a Contracting Agency awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and 200.045(3), or awards a Contract under ORS 279A.100:

(a) The Contracting Agency must provide, as a material condition of the Contract:

(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the Award of the Contract);

(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the Award of the subcontract);

(D) That the Contracting Agency may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (5) of this rule, the Contracting Agency must verify the Contractor's and any subcontractor's compliance with subsection (5)(a) of this rule.

(c) Subparagraph (5)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (5) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.105, ORS 279A.107 & ORS 279A.110

CONTRACT PREFERENCES

137-046-0300

Preference for Oregon Goods and Services; Nonresident Bidders

(1) **Award When Offers Identical.** When a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Contracting Agency shall award the Contract based on the following order of precedence:

- (a) The Agency shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services or Personal Services that have been manufactured or produced in Oregon.
- (b) If two or more Offerors submit identical Offers, and both offer Goods or Services or Personal Services manufactured or produced in Oregon, the Contracting Agency shall award the Contract by drawing lots among the identical Offers offering Goods or Services or Personal Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
- (c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services or Personal Services manufactured or produced in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(2) **Determining if Offers are Identical.** A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

- (a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services or Personal Services described in the Invitation to Bid at the same price.
- (b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
- (c) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in writing, that two or more Proposals are equally advantageous to the Contracting Agency.
- (d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with ORS 279B.070(4).

(3) **Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon.**

For the purposes of complying with section 1 of this Rule, Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Contracting Agency, any information the Contracting Agency determines is appropriate and necessary to allow the Contracting Agency to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods or Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Bidder or Proposer.

(4) **Procedure for Drawing Lots.** In any instance when this Section calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) **Discretionary Preference and Award.**

(a) Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than: (i) ten percent for

Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon; or (ii) five percent for Goods or Services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754, that submits with a bid or proposal a certificate of existence issued under ORS 60.027 and has the majority of the benefit company's regular, full-time workforce located in Oregon at the time the benefit company submits the bid or proposal.

(b) When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon.

(c) A Contracting Agency may establish a preference percentage higher than the percentages authorized in (5)(a) of this Rule by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage.

(d) The Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065 & ORS 279A.128

Stats. Implemented: ORS 279A.065, ORS 279A.120 & ORS 279A.128

137-046-0310

Reciprocal Preferences

(1) When evaluating Bids pursuant to Rules 137-047-0255, 137-047-0257 or 137-049-0390, Contracting Agencies shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. A Contracting Agency may rely on the list prepared and maintained by the Department of Administrative Services pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state bidders, and (ii) the amount of such preference.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.120

137-046-0320

Preference for Recycled Materials

(1) In comparing goods from two or more Offerors, if at least one Offeror offers goods manufactured from recycled materials, and at least one Offeror does not, a Contracting Agency shall select the Offeror offering goods manufactured from recycled materials if each of the conditions specified in ORS 279A.125(2) exists. When making the determination under ORS 279A.125(2)(d), the Contracting Agency shall consider the costs of the goods following any adjustments the Contracting Agency makes to the price of the goods after evaluation pursuant to Rule 137-046-0310.

(2) For the purposes of this Section, a Contracting Agency shall determine if goods are manufactured from recycled materials in accordance with standards established by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.125

COOPERATIVE PROCUREMENT

137-046-0400

Authority for Cooperative Procurements

(1) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) Each Purchasing Contracting Agency shall determine, in Writing, whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 consistent with ORS 279A.200(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

137-046-0410**Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies**

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurements administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether the participants must enter into a written agreement with the Administering Contracting Agency, or any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting Agency may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Rules.

(2) If a Contracting Agency, acting as a Purchasing Contracting Agency, enters into a Contract or Price Agreement based on a Cooperative Procurement, the Contracting Agency shall comply with the Code and these Rules, including without limitation those sections of the Code and these Rules that govern:

- (a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement,
- (b) The advertisement of the solicitation document related to the Cooperative Procurement, and
- (c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts or Price Agreements based on a Cooperative Procurement.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

137-046-0420**Joint Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.210

137-046-0430**Permissive Cooperative Procurements**

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

137-046-0440**Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement**

(1) A Purchasing Contracting Agency that wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement must publish notice of its intent to do so if the Purchasing Contracting Agency estimates that it will spend in excess of \$250,000 on Goods and Services or Personal Services acquired under the Contract or Price Agreement.

(2) For purposes of determining whether a Purchasing Contracting Agency must give the notice required by Rule 137-046-0440(1), a Purchasing Contracting Agency will spend in excess of \$250,000 for Goods and Services acquired under a Contract or Price Agreement arising out of a Permissive Cooperative Procurement if:

- (a) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
- (b) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of \$250,000; or
- (c) At the time the Purchasing Contracting Agency enters into the Contract or Price Agreement, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services or Personal Services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.

(3) The notice of intent required by Rule 137-046-0440(1) shall contain the information required by ORS 279A.215(2)(b), and Agency shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). Unless the Purchasing Contracting Agency sets forth a different time period in the notice, the Purchasing Contracting Agency shall give the notice required by this Section no fewer than 7 days before the deadline for submitting comments regarding the Purchasing Contracting Agency's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(4) An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in Rules 137-046-0440(1) and (3) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.

(5) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

137-046-0450

Interstate Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

137-046-0460

Advertisements of Interstate Cooperative Procurements

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the Purchasing Contracting Agency; or

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in 279B.055(4)(b) and (c).

(3) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a contract or price agreement through an Interstate Cooperative Procurement as set forth in ORS 279A.220(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

137-046-0470

Protests and Disputes

(1) If a bidder or proposer wishes to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement, or the award or proposed award of an Original Contract, the bidder or proposer shall direct the protest to the Administering Contracting Agency, and the bidder or proposer shall make such protest in accordance with ORS 279B.400 through ORS 279B.425. If the Administering Contracting Agency is not subject to the Code, then bidders or proposers shall make such protests in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from

exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.

(3) Any other protests related to a Cooperative Procurement, or disputes related to a Contract or Price Agreement arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.225

137-046-0480

Contract Amendments

A purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Rule 137-047-0800 for Goods and Service Contracts and Rule 137-049-0910 for Public Improvement Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

PUBLIC CONTRACTING RULES 2023

DIVISION 47

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES GENERAL PROVISIONS

137-047-0100

Application

These division 47 rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods or Services. These division 47 rules become effective upon adoption, and apply to Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

137-047-0110

Definitions

(1) "**Advantageous**" means in the Contracting Agency's best interests, as assessed according to the judgment of the Contracting Agency.

(2) "**Affected Person**" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.

(3) "**Scope**" means the range and attributes of the Goods or Services described in the applicable Procurement document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

SOURCE SELECTION

137-047-0250

Methods of Source Selection

Except as permitted by ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, a Contracting Agency shall Award a Public Contract for Goods or Services based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 or competitive sealed Proposals pursuant to ORS 279B.060

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.050

137-047-0255

Competitive Sealed Bidding

(1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in 137-047-0300.

(2) **Invitation to Bid.** In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

- (E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);
- (F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3));
- (G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-047-0430);
- (b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.055, the Contracting Agency's description of its need to purchase must:
- (A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;
- (B) Outline the anticipated duties of the Contractor under any resulting Contract;
- (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
- (D) Unless the Contracting Agency for good cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the Contracting Agency is purchasing.
- (c) Bidding and Evaluation Process.
- (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
- (B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates of actual future costs based on information the Contracting Agency has available concerning future use; and
- (C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to Rule 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
- (d) Applicable preferences pursuant to ORS 279B.055(6)(b).
- (e) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385 and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).
- (f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval from the Contracting Agency. Pursuant to ORS 279B.055, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
- (A) The Contracting Agency's reduction or withholding of payment under the Contract;
- (B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
- (C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.
- (3) **Good Cause**. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:
- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance, techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- (d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the

Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055

137-047-0257

Multistep Sealed Bidding

- (1) **Generally.** A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).
- (2) **Phased Process.** Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.
- (3) **Public Notice.** When a Contracting Agency uses multistep sealed bidding, the Contracting Agency shall give public notice for the first phase in accordance with Rule 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under Rule 137-047-430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under Rule 137-047-0720.
- (4) **Procedures Generally.** In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.
- (5) **Procedure for Phase One of Multistep Sealed Bidding.**
 - (a) **Form.** A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth in Rule 137-047-0255(2), the multistep Invitation to Bid must state:
 - (A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;
 - (B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;
 - (C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;
 - (D) The criteria to be used in the evaluation of unpriced submittals;
 - (b) **Evaluation.** The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.
- (6) **Procedure for Phase Two of Multistep Sealed Bidding.**
 - (a) **After** the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.
 - (b) **A Contracting Agency** shall conduct phase two as any other competitive sealed Bid Procurement except:
 - (A) As specifically set forth in this Rule or the Invitation to Bid;
 - (B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055

137-047-0260

Competitive Sealed Proposals

- (1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed Proposal as set forth in Rule 137-047-0300.
- (2) **Request for Proposal.** In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:
 - (a) **General Information.**
 - (A) Notice of any pre-Offer conference as follows:
 - (i) The time, date and location of any pre-Offer conference;
 - (ii) Whether attendance at the conference will be mandatory or voluntary; and

- (iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.
- (B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Proposals);
- (C) The time, date and place of Opening;
- (D) The office where the Solicitation Document may be reviewed;
- (E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3)); and
- (F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See Rule 137-047-0430).
- (b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:
 - (A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;
 - (B) Outline the anticipated duties of the Contractor under any resulting Contract;
 - (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
 - (D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning and land surveying services or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.
- (c) Proposal and Evaluation Process.
 - (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process.
 - (B) The Contracting Agency may set forth selection criteria in the Solicitation Document per ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall:
 - (i) Afford the Contracting Agency the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;
 - (ii) Rationally reflect Proposers' abilities to perform the resulting Contract in compliance with the Contract's requirements; and
 - (iii) Permit the Contracting Agency to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the Contracting Agency of entering into a Contract based on each Proposal, considering information available to the Contracting Agency and subject to the understanding that the actual Contract costs may vary as a result of the Statement of Work ultimately negotiated or the quantity of Goods or Services for which the Contracting Agency contracts.
 - (C) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to Rule 137-047-0600(4)(d), the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
 - (d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), 282.210, and Rules 137-046-0300 through 137-046-0330.
 - (e) For Contracting Agencies subject to ORS 305.385, Proposer's certification of compliance with the Oregon tax laws in accordance with ORS 305.385, as applicable and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).
 - (f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See Rule 137-047-0262.)
 - (g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
 - (A) The Contracting Agency's reduction or withholding of payment under the Contract;
 - (B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract, and identify those contractual terms and conditions, if any, subject to negotiation per Rule 137-047-0262(3). Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under Rule 137-047-0550, but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(5) **Good Cause.** For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- (d) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods and Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060, ORS 279A.107 & ORS 279B.130

137-047-0261

Procedures for Competitive Range, Multi-tiered and Multistep Proposals

(1) **Generally.** A Contracting Agency may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multi-step selection process that permits awards to the highest ranked proposer at any tier or step, calls for the establishment of a competitive range, or permits either serial or competitive simultaneous discussions or negotiations with one or more proposers. A Contracting Agency may employ one or more or any combination of the procedures set forth in this rule for competitive range, multi-tiered and multi-step proposals.

(2) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(3) **Exclusion Protest.** A Contracting Agency may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in Rule 137-047-0720.

(4) **Award Protest.** A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Rule 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in Rule 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the

exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0262

Competitive Range, Discussions and Negotiations

(1) When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with Rule 137-047-0720.

(2) **Discussions.** The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposer's Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice requesting best and final Offers.

(3) **Negotiations.** Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers.

(a) The Contracting Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(C) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(4) **Terminating Negotiations.** At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(5) **Best and Final Offers**. If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct the evaluations as described in Rule 137-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0263

Multistep Sealed Proposals

(1) **Generally**. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279.060(6)(b)(G).

(2) **Phased Process**. Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the final phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the Contracting Agency may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

(3) **Public Notice**. Whenever multistep sealed Proposals are used, public notice for the first phase shall be given in accordance with Rule 137-047-0300. Public notice is not required for the subsequent phases. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Rule 137-047-0720.

(4) Procedure for Phase One of Multistep Sealed Proposals.

(a) **Form**. Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in Rule 137-047-0260(2), the multistep Request for Proposal shall state:

(A) That un-priced technical Proposals are requested;

(B) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;

(C) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;

(D) The criteria to be used in the evaluation of un-priced technical Proposals;

(E) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical Proposals;

- (F) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal.
- (G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.
- (b) Addenda to the Request for Proposal. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.
- (c) Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.
- (d) Evaluation of Un-Priced Technical Proposals. Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal.
- (e) Discussion of Un-priced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.
- (f) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.
- (g) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule. No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065
 Stats. Implemented: ORS 279B.060

137-047-0265
Small Procurements

- (1) **Generally**. For Procurements of Goods or Services less than or equal to \$25,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process.
- (2) **Amendments**. A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the small procurement threshold stated in subsection (1) of this Rule.

Stat. Auth.: ORS 279A.065 & ORS 279B.065
 Stats. Implemented: ORS 279B.065

137-047-0270
Intermediate Procurements

- (1) **Generally**. For Procurements of Goods or Services greater than \$25,000 and less than or equal to \$250,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.
- (2) **Written Solicitations**. For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.
- (3) **Negotiations**. A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.
- (4) **Amendments**. A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds one hundred twenty-five percent (125%) of the intermediate procurement threshold stated in subsection (1) of this Rule.

Stat. Auth.: ORS 279A.065 & ORS 279B.070
 Stats. Implemented: ORS 279B.070

137-047-0275
Sole-Source Procurements

- (1) **Generally**. A Contracting Agency may Award a Public Contract without competition as a sole-source Procurement, after documenting the procurement file with findings of current market research to support the

determination that the Goods or Services are available from only one seller or source. The findings shall also include:

(a) a brief description of the contract or contracts to be covered including contemplated future purchases; (b) a description of the product or service to be purchased; and (c) the reasons the Contracting Agency is seeking this procurement method, which shall include any of the following: (i) efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies, or services; or (ii) that the Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source; or (iii) the particular product is for use in a pilot or an experimental project; or (iv) other findings that support the conclusion that the Goods or Services are available from only one source. ORS 279B.075(2)(d).

(2) **Public Notice.** If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, a Contracting Agency shall give public notice of the Contracting Agency's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give such public notice at least seven (7) Days before Award of the Contract, unless otherwise set forth in the notice.

(3) **Protest.** An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with Rule 137-047-0710.

Stat. Auth.: ORS 279A.065 & ORS 279B.075

Stats. Implemented: ORS 279B.075

137-047-0280

Emergency Procurements

A Contracting Agency may Award a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. For an Emergency Procurement of construction services that are not public improvements, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances, in conformance with ORS 279B.080(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080

137-047-0285

Special Procurements

(1) **Generally.** A Contracting Agency may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) **Public Notice.** A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract, unless a different time period is stated in the request for approval notice. Award may be made at the time of approval, contingent upon expiration of the protest period or issuance of a written disposition of any protest received.

(3) **Protest.** An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and Rule 137-047-0700.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.085

137-047-0290

Cooperative Procurements

A Contracting Agency may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and Rules 137-046-0400 through 137-046-0480.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.205

PROCUREMENT PROCESS

137-047-0300

Public Notice of Solicitation Documents

(1) **Notice of Solicitation Documents; Fee.** A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule, unless exempt pursuant to Rules 137-047-0265 through 137-047-0285. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements; or

(b) Placing notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) **Advertising.** A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System pursuant to Rule 137-047-0330 instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b).

(3) **Content of Advertisement.** All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) **Posting Advertisement for Offers.** The Contracting Agency may post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) **Fees.** The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) **Notice of Addenda.** The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with Rule 137-047-0430.

Stat. Auth.: ORS 279A.065, ORS 279B.055 & ORS 279B.060

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0310

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. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or in the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) **Contingent Offers.** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Rule 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) **Offeror's Acknowledgment.** By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-047-0262, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60

137-047-0320

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record, and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";
- (e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:
 - (A) Telephone number; and
 - (B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and
- (f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
 - (A) Receipt of garbled or incomplete documents;
 - (B) Availability or condition of the receiving facsimile machine;
 - (C) Incompatibility between the sending and receiving facsimile machine;
 - (D) Delay in transmission or receipt of documents;
 - (E) Failure of the Offeror to properly identify the Offer documents;
 - (F) Illegibility of Offer documents; and
 - (G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0330

Electronic Procurement

(1) Electronic Procurement Authorized.

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) **Rules Governing Electronic Procurements.** The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) **Preliminary Matters.** As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) **Offer Process.** A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with subsection 5(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest-ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) **Failure of the E-Procurement System.** In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in

accordance with Rule 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279A.065

BID AND PROPOSAL PREPARATION

137-047-0400

Offer Preparation

- (1) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.
- (2) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- (3) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required by the Solicitation Document.
- (4) **Electronic Submissions.** If the Solicitation Document permitted Electronic Offers under Rule 137-047-0330, an Offeror may submit its Offer electronically. The Contracting Agency shall not consider Electronic Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0410

Offer Submission

- (1) **Product Samples and Descriptive Literature.** A Contracting Agency may require product samples or descriptive literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of product samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.
- (2) **Identification of Offers.**
 - (a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document.
 - (b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (3) **Receipt of Offers.** The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0420

Pre-Offer Conferences

- (1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.
- (2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.
- (3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rules 137-047-0255(2) or 137-047-0260(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0430

Addenda to Solicitation Document

(1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with Rule 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with Rules 137-047-0261 through 137-047-0263. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) **Timelines; Extensions.**

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and Rules 137-047-0261 through 137-047-0263 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with Rule 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

Stat. Auth.: ORS 279A.065 & ORS 279B.060
Stats. Implemented: ORS 279B.060

137-047-0440

Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rules 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, 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 Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Contracting Agency.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0450

Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0460

Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-047-0470 or 137-047-0262.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0470

Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

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

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

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

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0480

Time for Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0490

Extension of Time for Acceptance of Offer

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

QUALIFICATIONS AND DUTIES

137-047-0500

Responsibility of Bidders and Proposers

Before Awarding a Contract, the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and Rule 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.110

137-047-0525

Qualified Products Lists

A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

137-047-0550

Prequalification of Prospective Offerors

(1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.120

137-047-0575

Debarment of Prospective Offerors

(1) **Generally.** A Contracting Agency may Debar prospective Offerors for the reasons set for the in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) **Responsibility.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) **Imputed Knowledge.** A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) **Limited Participation.** A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.130

OFFER EVALUATION AND AWARD

137-047-0600

Offer Evaluation and Award

(1) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and Rule 137-046-0310 for Nonresident Bidders.

(B) **Public Printing.** The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) **Award When Bids are Identical.** If the Contracting Agency determines that one or more Bids are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(b) Evaluation of Proposals.

(A) **Award When Proposals are Identical.** If the Contracting Agency determines that one or more Proposals are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(B) **Public Printing.** The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and Rule 137-046-0320.

(2) **Clarification of Bids or Proposals.** After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All Offers, in the Contracting Agency's sole discretion, needing clarification shall be accorded such an opportunity. The Contracting Agency shall document clarification of any Offer in the Procurement file.

(3) **Negotiations.**

(a) Bids. Except as permitted by section 2 of this rule, a Contracting Agency shall not negotiate with any Bidder. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and Rule 137-047-0262. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(4) **Award.**

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards - Bids.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

- (A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or
- (B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.
- (f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & ORS 279B.060
Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0610

Notice of Intent to Award

- (1) **Notice of Intent to Award**. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances require prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period in the Solicitation documents. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.
- (2) **Finality**. The Contracting Agency's Award shall not be final until the later of the following:
- (a) The expiration of the protest period provided pursuant to Rule 137-047-0740; or
 - (b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.
- (3) If so provided in the Solicitation documents, said notice of intent to Award may be issued via facsimile or electronic data exchange.

Stat. Auth.: ORS 279A.065 & ORS 279B.135
Stats. Implemented: ORS 279B.135

137-047-0620

Documentation of Award

- (1) **Basis of Award**. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.
- (2) **Contents of Award Record**. The Contracting Agency's record shall include:
- (a) For Bids:
 - (A) Bids;
 - (B) Completed Bid tabulation sheet; and
 - (C) Written justification for any rejection of lower Bids.
 - (b) For Proposals:
 - (A) Proposals;
 - (B) The completed evaluation of the Proposals;
 - (C) Written justification for any rejection of higher scoring Proposals; and
 - (D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and Rules 137-047-0261 through 137-047-0263, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0630

Availability of Award Decisions

- (1) **Contract Documents**. To the extent required by the Solicitation Document, the Contracting Agency shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.
- (2) **Availability of Award Decisions**. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Contracting Agency a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

(3) **Availability of Procurement Files.** After notice of intent to Award, the Contracting Agency shall make Procurement files available in accordance with applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0640

Rejection of an Offer

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(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;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to Rule 137-046-0210(4) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities; and

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency;

(v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state. Such certification demonstrates Offeror's compliance with such law in a credible and convenient way; and

(vi) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) **Form of Business Entity.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

(3) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-047-0610.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100, ORS 279B.110 & ORS 279B.130

137-047-0650

Rejection of All Offers

(1) **Rejection.** A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) **Criteria.** The Contracting Agency may reject all Offers 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, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(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) The Contracting Agency cancels the Procurement or solicitation in accordance with Rule 137-047-0660; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

137-047-0660

Cancellation of Procurement or Solicitation

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) **Notice of Cancellation Before Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same manner that the Contracting Agency initially provided notice of the solicitation. Such notice of cancellation shall:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Notice of Cancellation After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

137-047-0670

Disposition of Offers if Procurement or Solicitation Canceled

(1) **Prior to Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the

Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

(2) **After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:

(a) May return Proposals in accordance with ORS 279B.060(6)(c); and.

(b) Shall keep Bids in the Procurement file.

(3) **Rejection of All Offers.** If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

LEGAL REMEDIES

137-047-0700

Protests and Judicial Review of Special Procurements

(1) **Purpose.** An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) **Delivery.** Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) **Content of Protest.** The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) **Contract Review Authority Response.** The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) **Judicial Review.** An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & ORS 279B.400

Stats. Implemented: ORS 279B.400

137-047-0710

Protests and Judicial Review of Sole-Source Procurements

(1) **Purpose.** For sole-source Procurements requiring public notice under Rule 137-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) **Content of Protest.** The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) **Contract Review Authority Response.** The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the

protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.
(5) **Judicial Review.** Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.075

137-047-0720

Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

(1) **Purpose.** An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) **Basis for Protest.** An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the Contracting Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) **Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) **Content of Protest.** The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) **Contracting Agency Response.** The Contracting Agency shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under Rule 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under Rule 137-047-0660.

(6) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060

137-047-0730

Protests and Judicial Review of Solicitations

(1) **Purpose.**

(a) A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(b) Specific Special Procurements. Notwithstanding section 1(a) of this rule, a Person may not protest, challenge, or review approval of a Special Procurement except in conformance with ORS 279B.400.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.

(3) **Content of Protest.** In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The

Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under Rule 137-047-0430 or cancel the Procurement or solicitation under Rule 137-047-0660.

(5) **Extension of Closing.** If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider and respond to the protest.

(6) **Clarification.** Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(7) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & ORS 279B.405

Stats. Implemented: ORS 279B.405

137-047-0740

Protests and Judicial Review of Contract Award

(1) **Purpose.** An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first.

(3) **Content of Protest.** An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).

(4) **Contracting Agency Response.** The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & ORS 279B.410

Stats. Implemented: ORS 279B.410 & ORS 279B.415.

137-047-0745

Protests and Judicial Review of Qualified Products List Decisions

(1) **Purpose.** A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's Goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) **Delivery.** Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) **Content of Protest.** The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

(5) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115

137-047-0750

Judicial Review of Other Violations

Any violation of ORS chapter 279A or 279B by a Contracting Agency for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.420

137-047-0760

Review of Prequalification and Debarment Decisions

Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.425

137-047-0800

Amendments to Contracts and Price Agreements

(1) **Generally.** A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

- (a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.;
- (b) These Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.
- (c) The amendment is necessary to comply with a change in law that affects performance of the Contract.
- (d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:
 - (A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.
 - (B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract; and
 - (C) The renegotiated Contract will not increase or extend the total term of the original contract by more than one (1) year. Also, if multiple contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than one (1) year longer than the longest term of any of the prior Contracts.
- (e) If the Contract is the result of a Cooperative Procurement, the amended Contract may not materially change the terms, conditions, and prices of the Original Contract.

(2) **Small or Intermediate Contract.** A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to Section 1 of this rule, provided also that the total increased Contract Price does not exceed amendment allowances set forth in Rule 137-047-0265(2) for small Procurements and Rule 137-047-0270(4) for intermediate Procurements.

(3) **Emergency Contract.** A Contracting Agency may amend a Contract Awarded as an emergency Procurement if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.

(4) **Price Agreements.** A Contracting Agency may amend or terminate a Price Agreement as follows:

- (a) As permitted by the Price Agreement;
- (b) As permitted by this rule;
- (c) If the circumstances set forth in ORS 279B.140(2) exist; or
- (d) As permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0810

Termination of Price Agreements

(1) A Contracting Agency may terminate a Price Agreement as follows:

- (a) As permitted by the Price Agreement.
- (b) If the circumstances set forth in ORS 279B.140(2) exist; or
- (c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279B.140

PUBLIC CONTRACTING RULES 2023

DIVISION 48

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIST, TRANSPORTATION PLANNING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

137-048-0100

Application

These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services under Contracts, and set forth the following procedures:

- (a) Procedures through which Contracting Agency selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
- (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by a Local Government.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0110

Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and Rule 137-046-0110, the following definitions apply to these division 48 rules:

- (1) "**Consultant**" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.
- (2) "**Estimated Fee**" means Contracting Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.
- (3) "**Price Agreement**," for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include price or Consultant compensation information, with:
 - (a) No guarantee of a minimum or maximum purchase; or
 - (b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.
- (4) "**Project**" means all components of a Contracting Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- (5) "**Transportation Planning Services**" are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- (6) "**Related Services**" means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services,

material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0120

[Reserved.]

137-048-0130

Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agency shall follow the applicable selection procedure under either Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). In following the Direct Appointment Procedure under Rule 137-048-0200, Contracting Agency may base its selection of a consultant on any information available to Agency.

(2) When selecting Consultants to perform Related Services, Contracting Agency shall follow either its Division 47 or Division 48 rules, as determined in its sole discretion.

(3) A Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of Rule 137-048-0270 (Price Agreements).

(4) Contracting Agency may use electronic methods to screen and select a Consultant in accordance with the procedures described in Rule 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and Section (1) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and Section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and Divisions 46, 47 and 49 of these Rules that match the predominant purpose of the Contract.

(6) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals submitted under these Division 48 Rules.

(b) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agency may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agency may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant.

(c) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(7) Per ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, and unless permitted by ORS 279C.307(3), Contracting Agency may not:

(a) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract from a Contractor or an affiliate of a Contractor who is a party to the Public

Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services; or

(b) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services.

(8) The requirements of ORS 279C.307 and Section (7) of this rule apply in the following circumstances, except as provided in Section (9) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (8)(a) of this rule.

(9) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in Rule 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.100-279C.125

SELECTION PROCEDURES

137-048-0200

Direct Appointment Procedure

(1) Contracting Agency may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Contracting Agency finds that an Emergency exists; or

(b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or

(c) The following requirements are met:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project

as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Contracting Agency used either the formal selection procedure under Rule 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract.

(d) Continuation of Project With Extensive Estimated Fee. Where a Project is being continued under subsection 1(c) of this rule, and the Estimated Fee is expected to exceed \$250,000, the Contracting Agency must make written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(A) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and,

(B) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) Contracting Agency may select a Consultant for a Contract under this rule from any and all Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C110 & ORS 279C.115

137-048-0210

Informal Selection Procedure

(1) Contracting Agency may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.

(2) If using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and/or qualifications, Contracting Agency shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Consultant's specialized experience, capabilities and technical competence, which may be demonstrated with Consultant's proposed approach and methodology to meet the project requirements;

(ii) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(iii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;

(iv) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

- (v) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;
 - (vi) A Consultant's geographic proximity to and familiarity with the physical location of the Project;
 - (vii) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;
 - (viii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
 - (ix) If the Contracting Agency complies with the additional requirements of Section (3) of this Rule or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.
- (F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and
- (H) A sample form of the Contract.
- (b) Provide a Request for Proposals to a minimum of three (3) prospective Consultants drawn from any and all Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing. If three (3) prospective Consultants cannot reasonably be located, Contracting Agency shall document its efforts in writing and provide the RFP to those Consultants that were located.
- (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals.
- (3) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
- (a) States in the RFP:
 - (A) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
 - (B) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:
 - (i) Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and
 - (ii) The relative weight in points or percentages the Contracting Agency will give each factor;
 - (C) An estimate of the cost of services the Contracting Agency seeks in the procurement;
 - (D) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
 - (b) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
 - (c) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
 - (A) Must include:
 - (i) A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
 - (ii) A reasonable estimate of hours that the Consultant will require to perform the services sought.
 - (B) May include, at the Contracting Agency's request, additional pricing information that is limited to:
 - (i) A description of each task proposed by Consultant;
 - (ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
 - (iii) A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
 - (d) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultants does not wish to provide a price proposal.
 - (f) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.
- (4) If Contracting Agency does not cancel the RFP after it reviews and ranks each Consultant, Contracting Agency will begin negotiating a Contract with the highest ranked Consultant. Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (a) The Consultant's scope of services, performance obligations and performance schedule;
 - (b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

- (c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (5) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Consultant, if the Contracting Agency and Consultant are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Consultant, and if necessary, with the third ranked Consultant, in accordance with Section (4) of this rule, and as limited by Section (3) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any of the Consultants do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under Rule 137-048-0220 (Formal Selection Procedure).
- (6) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under Rule 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110

137-048-0220

Formal Selection Procedure

- (1) Contracting Agency shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agency's discretion.
- (2) When using the formal selection procedure Contracting Agency shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.
- (a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as desired by Contracting Agency to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.
- (A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.
- (B) Contracting Agency shall include a brief description of the following items in the advertisement:
- (i) The Project;
 - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;
 - (iii) How and where Consultants may obtain a copy of the RFQ or RFP; and
 - (iv) The deadline for submitting a Proposal or response to the RFQ or RFP.
- (b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in Rule 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.
- (c) In addition to publishing notice under Subsections (a) and (b) of this Section, Contracting Agency may also choose to send the RFP or RFQ, or notice thereof, directly to qualified Consultants.
- (3) Request for Qualifications Procedure. Contracting Agency may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.
- (a) A Contracting Agency shall include the following, at a minimum, in each RFQ:
- (A) A brief description of the Project for which the Contracting Agency is seeking Consultants;
 - (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;
 - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
 - (D) The deadline for submitting a response to the RFQ;
 - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;
 - (F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;
 - (G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation

Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and
(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may not request pricing policies, cost proposals, or other pricing information in the RFQ, but may request for any or all of the following:

- (A) A statement describing Consultants' general qualifications and related performance information;
- (B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;
- (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
- (D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;
- (E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;
- (F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;
- (G) Consultants' geographic proximity to and familiarity with the physical location of the Project;
- (H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
- (I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
- (J) Consultants' ability to assist Contracting Agency in complying with the solar energy technology requirements of ORS 279C.527; and
- (K) Any other information Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

- (A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
- (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
- (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.
- (d) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.
- (e) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agency shall use the procedure described in this Section (4) of this rule when issuing an RFP for a Contract described in Section (1) of this rule.

(a) RFP Required Contents. Contracting Agency using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

- (i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;
- (iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

- (iv) The recent, current and projected workloads of the staff and resources referenced in subsection (4)(a)(B)(iii), above;
- (v) The proportion of time Proposers estimate that the staff referenced in subsection (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance;
- (vii) References and recommendations from past clients;
- (viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;
- (ix) Status and quality of any required license or certification;
- (x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;
- (xi) Results from interviews, if conducted;
- (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (xiii) If the Contracting Agency complies with the additional requirements of Section (4)(b) of this Rule, or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and
- (xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.
- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
- (D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;
- (E) The date and time Proposals are due, and the delivery location for Proposals;
- (F) Reservation of the right to seek clarifications of each Proposal;
- (G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;
- (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the Contracting Agency;
- (I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;
- (K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
- (L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
- (M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (N) Where applicable, a statement requiring design compliance with ORS 279C.527, regarding green energy technology; and
- (O) A sample form of the Contract.
- (b) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
 - (A) States in the RFP:
 - (i) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
 - (ii) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:

1. Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and
 2. The relative weight in points or percentages the Contracting Agency will give each factor;
 - (iii) An estimate of the cost of services the Contracting Agency seeks in the procurement;
 - (iv) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
- (B) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
- (C) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
- (i) Must include:
 1. A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
 2. A reasonable estimate of hours that the Consultant will require to perform the services sought.
 - (ii) May include, at the Contracting Agency's request, additional pricing information that is limited to:
 1. A description of each task proposed by Consultant;
 2. A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
 3. A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
- (D) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultant does not wish to provide a price proposal.
- (E) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.
- (c) RFP Evaluation Committee. The Contracting Agency shall either establish a committee or designate an individual to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agency with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of an evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. If formed, the Contracting Agency shall designate a member of the evaluation committee as the evaluation committee chairperson.
- (d) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;
- (e) If the Contracting Agency does not cancel the RFP after completing the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (A) The Consultant's scope of services, performance obligations and performance schedule;
 - (B) Payment methodology, Consultant's rates and number hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
 - (C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (f) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with subsection (4)(e), and as limited by subsection (4)(b) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110 & ORS 279C.527

137-048-0230

Ties Among Proposers

(1) If Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this Section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under Rules 137-048-0210(4) or 137-048-0220(4)(c), as applicable.

(2) If Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in Rule 137-046-0300 (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.105 & ORS 279C.110

137-048-0240

Protest Procedures

(1) **RFP Protest and Request for Change.** Pursuant to ORS 279C.110(8), Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection.** Pursuant to ORS 279C.110(8), Consultants may protest Contracting Agency's Consultant selection for award, as follows:

(a) Single Award. In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of the selection notice that the Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests.** A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & 279C.110

137-048-0250

Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (Rule 137-048-0200), the Informal Selection Procedure (Rule 137-048-0210), or the Formal Selection Procedure (Rule 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents. In the event of any such cancellation, Contracting Agency shall return Proposals to Proposers and keep a list of returned Proposals in the Solicitation file, in accordance with ORS 279C.107.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279C.110

137-048-0260

Two-Tiered Selection Procedure when State Agency is Lead Contracting Agency

(1) If the Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) **Tier One.** The State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP pursuant to its own rules or, if permitted by state, by these Division 48 rules applicable selection procedures described in from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors, and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) **Tier Two.** In accordance with the qualifications-based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110 & ORS 279C.125

137-048-0270

Price Agreements

(1) Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with Rule 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agency may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) Solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion. In accordance with Rule 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information requested for Price Agreements with any Division 48 Consultant may include the number of hours proposed for the services required, expenses, hourly rates, the number of hours, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of Rule 137-048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) A clearly defined statement of work and performance schedule for any deliverables;

(b) The payment methodology, Consultant rates and number of hours, and a maximum, not-to-exceed price for the services required under the work order or task order that is fair and reasonable to the Contracting Agency, as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the services; and

- (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
- (d) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065, ORS 279C.110 & ORS 279C.120

POST-SELECTION CONSIDERATIONS

137-048-0300

Prohibited Payment Methodology; Purchase Restrictions

- (1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:
 - (a) Consultant's costs under the Contract plus a percentage of those costs; or
 - (b) A percentage of the Project construction costs or total Project costs.
- (2) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract in which:
 - (a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
 - (b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.
- (3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:
 - (a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see Rules 137-049-0670 and 137-049-0680); or
 - (b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0310

Expired or Terminated Contracts; Reinstatement

- (1) If Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:
 - (a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or
 - (b) Terminated Contracts. If Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.
- (2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:
 - (a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;

- (b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and
- (c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

137-048-0320

Contract Amendments

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

PUBLIC CONTRACTING RULES 2023

DIVISION 49

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

137-049-0100

Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Rules).

(3) These division 49 Rules become effective upon adoption, and apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-049-0110

Policies

In addition to the general Code policies set forth in ORS 279A.015, the ORS 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these division 49 rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.300 & ORS 279C.305

137-049-0120

Definitions

(1) "**Conduct Disqualification**" means a Disqualification pursuant to ORS 279C.440.

(2) "**Disqualification**" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with Rule 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) "**Foreign Contractor**" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 137-049-0480.

(4) "**Notice**" means any of the alternative forms of public announcement of Procurements, as described in Rule 137-049-0210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.110

137-049-0130

Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required by these Rules, or pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see Rules 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0140

Contracts for Construction Other than Public Improvements

(1) **Procurement Under ORS Chapter 279B.** Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(6) and Rule 137-049-0150, may be procured and amended as general trade services under the provisions of ORS Chapter 279B and division 47 Rules, rather than under the provisions of ORS Chapter 279C and these division 49 rules.

(2) **Application of ORS Chapter 279C.** Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.320

137-049-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) **Emergency Declaration.** A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall thereafter be kept on file as a public record.

(2) **Competition for Contracts.** Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Emergency Contract Modification.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See Rule 137-049-0815 and BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080, ORS 279C.320 & ORS 279C.380

137-049-0160

Intermediate Procurements; Competitive Quotes and Amendments

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to cost \$25,000 or more, but not to exceed \$100,000 may be Awarded in accordance with this rule.

(2) **Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes.** Contracting Agencies shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral requests for quotes may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required.** Contracting Agencies shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a written record of the effort made to obtain those quotes.

(5) **Award.** If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a written record of the basis for Award.

(6) **Price Increases.** Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to Rule 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments.** Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule and Rule 137-049-0910. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.412.

FORMAL PROCUREMENT RULES

137-049-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

(1) **Solicitation Document.** Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information.

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See Rule 137-049-0300 regarding facsimile Bids or Proposals and Rule 137-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 137-049-0360. For timing issues relating to Addenda, see Rule 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.";

- (K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered and in good standing with the Construction Contractors Bd, or is licensed by the State Landscape Contractors Bd, as specified in Rule 137-049-0230;
- (L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
- (M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-049-0440(3));
- (N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-049-0250); and
- (O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 137-049-0360.
- (P) Where applicable, a statement requiring compliance with ORS 279C.527, green energy technology.
- (b) Evaluation Process:
- (A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b) and may reject for good cause all Offers after finding that doing so is in the public's interest;
- (B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;
- (C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;
- (i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;
- (ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of Rule 137-049-0650 and 279C.400 to 279C.410; and
- (c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:
- (A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- (B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
- (C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- (D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- (E) Payment of claims by public officers (ORS 279C.515(1));
- (F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
- (G) Person's right to file a complaint with the Construction Contractors Bd for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- (H) Hours of labor in compliance with ORS 279C.520;
- (I) Environmental and natural resources regulations (ORS 279C.525);
- (J) Payment for medical care and attention to employees (ORS 279C.530(1));
- (K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));
- (L) Maximum hours, holidays and overtime (ORS 279C.540);
- (M) Time limitation on claims for overtime (ORS 279C.545);
- (N) Prevailing wage rates (ORS 279C.800 to 279C.870);
- (O) BOLI Public Works bond (ORS 279C.830(3));
- (P) Retainage (ORS 279C.550 to 279C.570);
- (Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);
(S) Notice of claim (ORS 279C.605);
(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Bd or licensed by the State Landscape Contractors Bd in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) **Assignment or Transfer Restricted.** Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.110(4), ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055

137-049-0210

Notice and Advertising Requirements; Posting

(1) **Notice and Distribution Fee.** A Contracting Agency may furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice may indicate where, when, how and for how long the Solicitation Document may be obtained; generally describe the Public Improvement project or Work; and may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

- (a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;
- (b) Placing Notice on the Contracting Agency's Electronic Procurement System; or
- (c) Placing Notice on the Contracting Agency's Internet Web site.

(2) **Advertising.** Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the exempted the Solicitation is otherwise exempt from the advertisement requirement under these rules or pursuant to a competitive bidding exemption adopted under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines that Electronic Advertisement is likely to be cost effective and, pursuant to 137-049-0310(2), adopts rules authorizing Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(d) All advertisements for Offers shall set forth:

- (A) The Public Improvement project;
- (B) The office or website where Contract terms, conditions and Specifications may be reviewed;
- (C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;
- (D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;
- (E) The name, title and address of the Contracting Agency Person authorized to receive Offers;
- (F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360 & ORS 200.035

137-049-0220

Prequalification of Offerors

(1) **Prequalification.** Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) **Mandatory Prequalification.** A Contracting Agency may require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. The Contracting Agency shall determine prequalification status in accordance with 279C.430. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification and establish the time for submitting the prequalification application. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) **Permissive Prequalification.** A Contracting Agency may prequalify a Person for the Contracting Agency's Solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a Solicitation to that list.

(2) **Prequalification Presumed.** If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) **Standards for Prequalification.** A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency.

(See, Rule 137-049-0390(2) regarding standards of responsibility.)

(4) **Notice of Denial.** If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.430 & ORS 279C.435

137-049-0230

Eligibility to Bid or Propose; Registration or License

(1) **Construction Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Bd at the time the Offer is made.

(2) **Landscape Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractor's license issued pursuant to ORS 671.560 by the State Landscape Contractors Bd at the time the offer is made.

(3) **Noncomplying Entities.** The Contracting Agency shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 671.530 & ORS 701.055

137-049-0240

Pre-Offer Conferences

(1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.

(2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

- (3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **Contracting Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 137-049-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.365 & ORS 279C.370

137-049-0250

Addenda to Solicitation Documents

- (1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda or in the Solicitation Document.
- (2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Rule 137-049-0210(1). The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available (see Rule 137-049-0200(1)(a)(N)). For example, "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's Web site. Addenda may be downloaded off the Contracting Agency's Web site. Offerors should frequently check the Contracting Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."
- (3) **Timelines; Extensions.** The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
- (4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-049-0260, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-049-0260, whichever date is later. The Contracting Agency shall consider only an Offeror's request for change or protest to the Addendum; the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Contracting Agency's receipt of request for change or protests as set forth in Rule 137-049-0260(2) and (3).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.395 & ORS 279A.065

137-049-0260

Request for Clarification or Change; Solicitation Protests

- (1) **Clarification.** Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.
- (2) **Request for Change.**
- (a) **Delivery.** An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing;
- (b) **Content of Request for Change.**
- (A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.
- (B) An Offeror shall mark its request for change as follows:
- (i) "Contract Provision Request for Change"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) **Protest.**

(a) **Delivery.** An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing;

(b) **Content of Protest.**

(A) An Offeror's Written protest shall include:

- (i) A detailed statement of the legal and factual grounds for the protest;
- (ii) A description of the resulting prejudice to the Offeror; and
- (iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

- (i) "Contract Provision Protest"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) **Contracting Agency Response.** The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under Rule 137-049-0260 or cancel the Solicitation under Rule 137-049-0270.

(5) **Extension of Closing.** If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345 & ORS 279C.365

137-049-0270

Cancellation of Solicitation Document

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the Solicitation file.

(2) **Notice of Cancellation.** If the Contracting Agency cancels a Solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with Rule 137-049-0210(1). Such notice of cancellation shall:

- (a) Identify the Solicitation;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Disposition of Offers.**

(a) **Prior to Offer Opening.** If the Contracting Agency cancels a Solicitation prior to Offer Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.

(b) **After Offer Opening.** If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395

137-049-0280

Offer Submissions

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive Solicitations, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-049-0410. The Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with Proposer. See Rule 137-049-0650 on Requests for Proposals and Rule 137-049-0290 on Bid or Proposal Security.

(2) **Responsive Offer.** A Contracting Agency may Award a Contract only to a Responsible Offeror with a Responsive Offer.

- (3) **Contingent Offers.** Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to Rule 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- (4) **Offeror's Acknowledgement.** By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-049-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.
- (5) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- (6) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- (7) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required under the Solicitation Document.
- (8) **Facsimile or Electronic Submissions.** If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.
- (9) **Product Samples and Descriptive Literature.** A Contracting Agency may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- (10) **Identification of Offers**
- (a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.
- (b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (11) **Receipt of Offers.** The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

137-049-0290

Bid or Proposal Security

- (1) **Security Amount.** If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(4) and ORS 279C.385.
- (2) **Requirement for Bid Security (Optional for Proposals).** Unless a Contracting Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(5). The Contracting Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).
- (3) **Form of Bid or Proposal Security.** A Contracting Agency may accept only the following forms of Bid or Proposal security:
- (a) A surety bond from a surety company authorized to do business in the State of Oregon;
- (b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
- (c) A cashier's check or Offeror's certified check.
- (4) **Return of Security.** A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or

Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.385 & ORS 279C.390

137-049-0300

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency shall not authorize facsimile Offers unless the Contracting Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions to be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a request for quotes) the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine.";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer.";
- (e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:
 - (A) Telephone number; and
 - (B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and
 - (f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
 - (A) Receipt of garbled or incomplete documents;
 - (B) Availability or condition of the receiving facsimile machine;
 - (C) Incompatibility between the sending and receiving facsimile machine;
 - (D) Delay in transmission or receipt of documents;
 - (E) Failure of the Offeror to properly identify the Offer documents;
 - (F) Illegibility of Offer documents; and
 - (G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

137-049-0310

Electronic Procurement

(1) **General.** Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1) and Rule 137-049-0210(2)(b), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures.** In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with Rule 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C

requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation.** Nothing in this rule shall be construed as prohibiting Contracting Agency from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

137-049-0320

Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rule 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation.** The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360(2), ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0330

Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) **Availability.** After Opening, the Contracting Agency shall make Bids available for public inspection, but, pursuant to ORS 279C.410, Proposals are not subject to disclosure until after notice of intent to award is issued. In any event, Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0340

Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. A Contracting Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-049-0350 or 137-049-0390.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0350

Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

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

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

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

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, 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 Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375 & ORS 279C.395

137-049-0360

First-Tier Subcontractors; Disclosure and Substitution

(1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed \$100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least \$15,000; or

(b) \$350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline and Bid Opening.** For each ITB to which this rule applies, the Contracting Agency shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) **Bidder Instructions and Disclosure Form.** For the purposes of this rule, a Contracting Agency in its Solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is estimated by the Contracting Agency to be greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

(1) The subcontractor's name,

(2) The category of Work that the subcontractor would be performing, and

(3) The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see Rule 137-049-0360)."

(4) **Submission.** A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) **Contracting Agency Role.** Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) **Substitution.** Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies

do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.370, ORS 279C.585, ORS 279C.590 & ORS 279C.835

137-049-0370

Disqualification of Persons

(1) **Authority.** A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction 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 as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a veteran, as defined by ORS 200.005, owns; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a veteran, as defined by ORS 200.005, owns, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a veteran, as defined by ORS 200.005, owns in awarding a subcontract under a Contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify.** The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

- (d) Include a statement of the authority and jurisdiction under which the hearing will be held;
 - (e) Include a reference to the particular sections of the statutes and rules involved;
 - (f) State the proposed Disqualification period; and
 - (g) State that the Person may be represented by legal counsel.
- (3) **Hearing.** The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.
- (4) **Notice of Disqualification.** The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
- (a) The effective date and period of Disqualification;
 - (b) The grounds for Disqualification; and
 - (c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.110, ORS 279C.440, ORS 279C.445 & ORS 279C.450

137-049-0380

Bid or Proposal Evaluation Criteria

(1) **General.** A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See Rule 137-049-0390, and Rules for Alternative Contracting Methods at Rules 137-049-0600 to 137-049-0690.

(2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.

(b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See Rule 137-049-0350(2)(b).

(3) **Proposal Evaluation Criteria.** If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See Rules 137-049-0650, 137-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0390

Offer Evaluation and Award; Determination of Responsibility

(1) **General.** If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract, see ORS 279C.375(3)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120) education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple Contract awards when specified in the ITB.

(2) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

- (a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
- (b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
- (c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under Rule 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;
- (d) Is legally qualified to contract with the Contracting Agency;
- (e) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the Work specified in the Contract;
- (f) Is covered by liability insurance and other insurance in amounts the Contracting Agency requires in the Solicitation Documents;
- (g) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128;
- (h) Has made the disclosure required under ORS 279C.370; and
- (i) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting Agency Determinations.** Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions.**

- (a) The Contracting Agency may require an Offeror to submit Product Samples, descriptive literature, technical data, or other material and may also require any of the following prior to Award:
 - (A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;
 - (B) Examination of such elements as appearance or finish; or
 - (C) Other examinations to determine whether the product conforms to Specifications.
- (b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) **Evaluation of Bids.** The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

- (a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with Rule 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
 - (b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
 - (c) Negotiation Prohibited. Except as allowed by Rules 137-049-0420(1) and 137-049-0430, the Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.
- (7) **Evaluation of Proposals.** See Rule 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0395

Notice of Intent to Award

- (1) **Notice.** At least seven days before the Award of a Public Improvement Contract, unless the Contracting Agency determines that seven days is impractical and documents its reasons therefore in the procurement file, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post, electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small, intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).
- (2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.
- (3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:
 - (a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
 - (b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.
- (4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reason for the determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

137-049-0400

Documentation of Award; Availability of Award Decisions

- (1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Solicitation file.
- (2) **Contents of Award Record for Bids.** The Contracting Agency's record shall include:
 - (a) All submitted Bids;
 - (b) Completed Bid tabulation sheet; and
 - (c) Written justification for any rejection of lower Bids.
- (3) **Contents of Award Record for Proposals.** Where the use of Requests for Proposals is authorized as set forth in Rule 137-049-0650, the Contracting Agency's record shall include:
 - (a) All submitted Proposals.
 - (b) The completed evaluation of the Proposals;
 - (c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
 - (d) If the Contracting Agency permitted negotiations in accordance with Rule 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.
- (4) **Contract Document.** The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.
- (5) **Bid Tabulations and Award Summaries.** Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations

of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) **Availability of Solicitation Files.** The Contracting Agency shall make completed Solicitation files available for public review at the Contracting Agency.

(7) **Copies from Solicitation Files.** Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

137-049-0410

Time for Contracting Agency Acceptance; Extension

(1) **Time for Offer Acceptance.** An Offeror's Bid, or Proposal submitted as a Firm Offer (see Rule 137-049-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

(2) **Extension of Acceptance Time.** A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

137-049-0420

Negotiation With Bidders Prohibited

(1) **Bids.** Except as permitted by ORS 279C.340 and Rule 137-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with Rule 137-049-0910.

(2) **Requests for Proposals.** A Contracting Agency may conduct discussions or negotiations with Proposers only in accordance with the requirements of Rule 137-049-0650.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.340 & ORS 279C.375

137-049-0430

Negotiation When Bids Exceed Cost Estimate

(1) **Generally.** In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 137-049-0360 do not apply to negotiations under this rule.

(2) **Definitions.** The following definitions apply to this administrative rule:

(a) **"Cost Estimate"** means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) **"Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Rule 137-049-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) **"Project"** means a Public Improvement.

(d) **"Value Engineering"** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

- (3) **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.
- (4) **Scope of Negotiations.** Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.
- (5) **Discontinuing Negotiations.** The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.
- (6) **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.
- (7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & ORS 279A.065
 Stats. Implemented: ORS 279C.340

137-049-0440

Rejection of Offers

(1) Rejection of an Offer.

- (a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.
- (b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:
- (A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - (B) Takes exception to terms and conditions (including Specifications);
 - (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - (D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;
 - (E) Is late;
 - (F) Is not in substantial compliance with the Solicitation Documents;
 - (G) Is not in substantial compliance with all prescribed public Solicitation procedures.
- (c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:
- (A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;
 - (B) Has been Disqualified;
 - (C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - (D) Is listed as not qualified by the Construction Contractors Bd, if the Contract is for a Public Improvement;
 - (E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
 - (F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
 - (G) Has failed to provide the certification required under section 3 of this rule;
 - (H) Is not Responsible. See Rule 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.
- (2) **Form of Business.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and Rule 137-049-0370.
- (3) **Certification of Non-Discrimination.** The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a veteran, as defined by ORS 200.005, owns in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-049-0395.

(5) **Rejection of all Offers.** A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(6) **Criteria for Rejection of All Offers.** The Contracting Agency may reject all Offers upon a Written finding that:

- (a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
- (b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
- (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 Procurement process. These causes include, but are not limited to, 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) The Contracting Agency cancels the Solicitation in accordance with Rule 137-049-0270; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.105, ORS 279A.110, ORS 279C.375, ORS 279C.380 & ORS 279C.395,

137-049-0450

Protest of Contractor Selection, Contract Award

(1) **Purpose.** An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Notice of Competitive Range.** Unless otherwise provided in the RFP, under Rule 137-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

- (a) Seven (7) Days after the date of the notice, unless otherwise provided therein; or
- (b) Until the Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award.** The Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided in Rule 137-049-0395.

(4) Right to Protest Award.

(a) To protest an Award, an adversely affected or aggrieved Offeror must submit to the Contracting Agency a Written protest within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

- (A) Because their Offers were nonresponsive; or
- (B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range.

(a) An adversely affected or aggrieved Proposer may submit to the Contracting Agency a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven Days

after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at Rule 137-049-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests.** The head of the Contracting Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision.** If a protest is not settled, the head of the Contracting Agency, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award.** The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380, ORS 279C.385 & ORS 279C.460

137-049-0460

Performance and Payment Security; Waiver

(1) **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the Contracting Agency's Contract Review Authority exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.380(5). Under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see Rule 137-049-0815 and BOLI rules at OAR 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts.** A Contracting Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond.** The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) **Time for Submission.** The apparent successful Offeror must promptly furnish the required performance security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380 & ORS 279C.390

137-049-0470

Substitute Contractor

If the Contractor provided a performance bond, the Contracting Agency, in its sole discretion, may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.370, ORS 279C.375, ORS 279C.380 & ORS 279C.390

137-049-0490

Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the Contracting Agency. The Contracting Agency Awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.120

ALTERNATIVE CONTRACTING METHODS

137-049-0600

Purpose

Rules 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. Alternative Contracting Methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. To the extent any such Alternative Contracting Methods (with the exception of CM/GC) are utilized within the competitive bidding process set forth at ORS 279C.335(1), Rules 137-049-0600 to 137-049-0690 are advisory only and need not be followed.

Stat. Auth.: ORS 279C.335, ORS 279A.065 & ORS 351.086

Stats. Implemented: ORS 279C.335, ORS 279C.337, ORS 279A.065 & ORS 351.086

137-049-0610

Definitions for Alternative Contracting Methods

The following definitions shall apply to these 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

- (1) "**Alternative Contracting Methods**" means innovative Procurement techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting *and* CM/GC forms of contracting, which are specifically addressed in these 137-049-0600 to 137-049-0690 rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements are identified under these 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).
- (2) "**Construction Manager/General Contractor (or "CM/GC")**" has the meaning set forth in ORS 279C.332(2).

(3) **“Construction Manager/General Contractor Method (or “CM/GC Method)”** means the Alternative Method which involves a Contracting Agency’s selection of a CM/GC to perform CM/GC Services for a project or projects.

(4) **“Construction Manager/General Contractor Services (or CM/GC Services)”** has the meaning set forth in ORS 279C.332(3).

(5) **“Design-Build”** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(6) **“Guaranteed Maximum Price (or “GMP)”** has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, “Guaranteed Maximum Price” (or “GMP”) means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.332, ORS 279C.335 & ORS 279A.065

137-049-0620

Use of Alternative Contracting Methods

(1) **Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Contracting Agency rules. Use of Alternative Contracting Methods may be directed by a Contracting Agency’s Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and these 137-049-0600 to 137-049-0690 rules. See Rule 137-049-0630 regarding required Findings and restrictions on class exemptions. Contracting Agency’s Contract Review Authority has duly adopted class exemptions for the use of Requests for Proposals (RFP) and ESPC forms of contracting and authorized Contracting Agency to approve use of these alternative solicitation and contracting methods in accordance with Rules 137-049-0600 to 137-049-0690, as applicable.

(2) **Post-Project Evaluation.** Per ORS 279C.355 the Contracting Agency shall prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency’s best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Contracting Agency’s Contract Review Authority within 30 Days of the date the Contracting Agency “accepts” the Public Improvement project, as defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. The evaluation shall address:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.355 & ORS 351.086

137-049-0630

Findings, Notice and Hearing

(1) **“Cost Savings” and Other Substantial Benefits Factors.** When Findings are required under ORS 279C.335(2)(b) to exempt a Contract or class of Contracts from the competitive bidding requirements, the “substantial cost savings and other substantial benefits” criterion at 279C.335(2)(b) requires consideration of the type, cost and amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the local contract review board need not consider nor address that factor.

(2) **Required Information.** The statutory definition of “Findings” at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a Contracting

Agency's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and either 279C.335(2)(b) or 279C.335(2)(c).

(3) **Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, Contracting Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c).

(4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed for Alternative Contracting Methods by specifying: (a) the manner in which an RFP process will be utilized; (b) that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method; (c) that competition will be encouraged; and (d) that Award will be made based upon identified selection criteria and an opportunity to protest that Award provided.

(5) **Class Exemptions.** In making the findings supporting a class exemption the Contracting Agency shall clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279.335(3). Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values, method of procurement, or other factors that distinguish the limited and related class of Projects from a Contracting Agency's overall construction program. The Contracting Agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria of ORS 279C.335(2).

(6) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency shall give notice and may hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's draft Findings.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335 & ORS 279A.065

137-049-0640

General Alternative Contracting Procedures

(1) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS 279C.305.

(2) **Evaluation Factors.**

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include any factors required by ORS 279C.337 and OAR 137-049-0690.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and Rules 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Rule 137-049-0650. Terms that may be negotiated consist of details of Contract

performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that could affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the Contracting Agency has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of Rule 137-049-0680.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065 & ORS 351.086

137-049-0650

Requests for Proposals (RFP)

(1) Generally.

(a) Contracting Agency may utilize the following RFP process for public improvement contracts to allow flexibility in both proposal evaluation and contract negotiation, subject to ORS 279C.400 to 279C.410, Rules 137-049-0200 to 137-049-0480, and 137-049-0640 to 137-049-0660, unless other applicable statutes or rules control a Contracting Agency's use of competitive proposals for public improvement contracts.

(b) Contracting Agency may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation or distribution of a Request for Proposals. ORS 279C.410(9).

(2) **Solicitation Documents.** In addition to the Solicitation Document requirements of Rule 137-049-0200, Public Improvement Contract Requests for Proposals shall include:

(a) Whether Contracting Agency reserves the right to Award to and Contract with more than one Proposer.

(b) All evaluation factors that will be considered by the Contracting Agency when evaluating the proposals, including the relative importance of price and any other evaluation factors. Evaluation factors may include, but are not limited to, such considerations as price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions.

(c) The method of contractor selection, which may include, but is not limited to, Award without negotiation, negotiation with the highest ranked Proposer, competitive negotiations, multiple-tiered competition designed to either identify a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of these methods;

(d) All required contractual terms and conditions. The Request for Proposals also may: (i) identify those contractual terms or conditions that Contracting Agency reserves, in the Request for Proposals, for negotiation with Proposers; (ii) request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals; and (iii) contain or incorporate the form and content of the contract that the Contracting Agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with Proposers.

(3) Evaluation of Proposals.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process outlined in subsections (5)(b) and (6) of this rule do not apply to this limited negotiation.

(b) Discussions; Negotiations. The Contracting Agency shall evaluate Proposals and, if applicable, establish the Competitive Range, before conducting discussions or negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency may establish a negotiation committee which may include members with legal, technical or negotiating expertise.
(c) Cancellation/Rejection. Cancellation of the Solicitation or rejection of proposals shall be in accordance with ORS 279C.395.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the Solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating that a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Notice/Protests. Notice of Competitive Range and Award, and associated protest rights will be as established in Rule 137-049-0450.

(c) After the protest period provided in accordance with Rule 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the Solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. Written notice of intent to Award and associated protest rights are as established in Rule 137-049-0450. After the protest period expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations.

(6) Negotiations.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of Work;

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

(iii) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals.

(c) Terminating Negotiations. The Contracting Agency may terminate negotiations with any Proposer at any time, if the Contracting Agency reasonably believes that:

(A) The Proposer is not discussing or negotiating in good faith; or

(B) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(d) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or

(B) Completed at least one round of negotiations with all Proposers in the Competitive Range.

(7) Post Project Evaluation. For projects over \$100,000, Contracting Agency shall complete a post project evaluation in compliance with ORS 279C.355 and Rule 137-049-0620(3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 to ORS 279C.410

137-049-0660

RFP Pricing Mechanisms

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive bidding. Alternatively, a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price (GMP) *may be* used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.

(a) If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.

(b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0670

Design-Build Contracts

(1) **General.** The Design-Build form of contracting, as defined in Rule 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

- (a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;
- (b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
- (c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
- (d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or
- (e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) **Authority.** Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules. See particularly Rule 137-049-0620 on "Use of Alternative Contracting Methods" and Rule 137-049-0680 pertaining to ESPCs.

(3) **Selection.** Design-Build selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b) and (c).

(4) **QBS Inapplicable.** Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(5) **Licensing.** If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(6) **Performance Security.** ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) **Contract Requirements.** Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:

- (a) **Design Services.** The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
- (b) **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.
- (c) **Risk Allocation.** The Contract shall clearly identify the extent to which the Contracting Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.
- (d) **Warranties.** The Contract shall clearly identify any express warranties made to the Contracting Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
- (e) **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the Contracting Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

137-049-0680

Energy Savings Performance Contracts (ESPC)

(1) **Generally**. These 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agency to enter into ESPCs outside the competitive bidding requirements of ORS 279C.334. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method provided for by these 137-049-0600 to 137-049-0690 rules, the Contracting Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any Contracting Agency not subject to all the requirements of ORS 279C.335.

(2) **ESPC Contracting Method**. The ESPC form of contracting, as defined at Rule 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Contracting Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs. Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, Measurement and Verification (M & V) services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;

(f) Integrating cost-effective Energy Conservation Measures (ECMs) into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority**. Contracting Agency may utilize the ESPC form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules.

(4) **No Findings Required**. A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding process of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Contracting Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in 137-049-0600 to 137-049-0690 of these rules.

(5) **Selection**. ESPC contracts may be directly awarded or solicited via an informal or formal RFP process. ESPC selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b), and (c). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, prior to award, potential awardees must identify any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) **QBS Inapplicable**. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) **Licensing**. If the ESCO is not an Oregon licensed design professional, the Contracting Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5)

regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these “design and related services” include conventional design services, commissioning services, training services for the Contracting Agency’s operations and maintenance staff, and any similar Personal Services provided by the ESCO’s Energy Savings Guarantee are not included in these 279C.380(1)(a) “design and related services.” Nevertheless, a Contracting Agency may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO’s Energy Savings Guarantee, if the Contracting Agency so provides in the RFP.

(9) **Contracting Requirements.** Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) **General ESPC Contracting Practices.** An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO’s Energy Savings Guarantee for the project.

(B) The various phases of the ESCO’s Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Contracting Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) **Design-Build Contracting Requirements in ESPCs.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Rule 137-040-0560(7) above.

(c) **Pricing Alternatives.** The Contracting Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, which a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Contracting Agency, the ESCO’s M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency’s future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) **Permitted ESPC Scope of Work.** The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these 137-049-0600 to 137-049-0690 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

137-049-0690

Construction Manager/General Contractor (CM/GC)

Contracting Agency shall use a Construction Manager/General Contractor (CM/GC) form of contracting, as defined in Rule 137-049-0610(3), only in accordance with ORS 279C.337 and OAR 137-049-0690.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.335, ORS 279C.337 & ORS 279C.380(2)

CONTRACT PROVISIONS

137-049-0800

Required Contract Clauses

Contracting Agencies shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 137-049-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.505 to ORS 279C.545 & ORS 279C.800 to 279C.870

137-049-0810

Waiver of Delay Damages Against Public Policy

Contracting Agencies shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from a Contracting Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.315

137-049-0815

BOLI Public Works Bond

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth. ORS 279A.065

Stats. Implemented: ORS 279C.830

137-049-0820

Retainage

(1) **Withholding of Retainage.** Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond, security, or other instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond, security, or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) **Deposit in interest-bearing accounts.** Either upon election of the Contractor pursuant to ORS 279C.560(5) or as required when the Contract Price exceeds \$500,000 pursuant to ORS 279C.570(2), a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, or interest-bearing escrow account pursuant to ORS 279C.570(2). Earnings on such an account shall accrue to the Contractor from the date the Contractor's related payment request is fully approved by the Contracting Agency, until the date the retainage is paid to the Contractor. For purposes of this Section, a payment of retainage is deemed to be "paid" by a Contracting Agency when the payment is transmitted to the Contractor or otherwise applied against an obligation of the Contractor under the Contract.

(4) **Alternatives to cash retainage.** In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vii) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) **Recovery of Costs.** Pursuant to ORS 279C.560(3), a Contracting Agency may reduce the final

payment to recover from the Contractor all additional costs incurred as a result of Contractor's election to:

(i) submit an alternative to cash retainage pursuant to section (4) of this rule; or (ii) to deposit cash retainage in an interest-bearing account pursuant to section (3) of this rule for Contracts not in excess of \$500,000 by reducing the final payment.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & ORS 279C.845

Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420

137-049-0830

Contractor Progress Payments

(1) **Request for progress payments.** Each month the Contractor shall submit to the Contracting Agency its Written request for a progress payment based upon an estimated percentage of Contract completion. At the Contracting Agency's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Contracting Agency will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the Contracting Agency for any cause; and (iv) less the appropriate amount of retainage.

(2) **Progress payments do not mean acceptance of Work.** Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

137-049-0840

Interest

(1) **Prompt payment policy.** A Contracting Agency shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) **Interest on progress payments.** Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Contracting Agency approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) **Interest on final payment.** Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) **Settlement or judgment interest.** In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

137-049-0850

Final Inspection

(1) **Notification of Completion; inspection.** The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) **Acknowledgment of acceptance.** When the Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570(8)

137-049-0860

Public Works Contracts

(1) **Generally.** ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) **Required Contract Conditions.** As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.

(f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

(3) **Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):

(A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or,

(C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 – ORS 279C.870

137-049-0870

Specifications; Brand Name Products

(1) **Generally.** The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) **Equivalents.** A Contracting Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345

137-049-0880

Records Maintenance; Right to Audit Records

(1) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Contracting Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit.** A Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit.** The Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030, ORS 279C.375, ORS 279C.380 & ORS 279C.440

137-049-0890

Contracting Agency Payment for Unpaid Labor or Supplies

(1) **Contract incomplete.** If the Contract is still in force, the Contracting Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If a Contracting Agency chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) **Contract completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The Contracting Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.515

137-049-0900

Contract Suspension; Termination Procedures

(1) **Suspension of Work.** In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency.** A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative.** The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

(6) Application of this rule does not apply to suspension of the work or termination of the Contract as a result of Contractor's violation of any provision of law or Contract term.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

137-049-0910

Changes to the Work and Contract Amendments

(1) **Definitions for Rule.** As used in this rule:

(a) "**Amendment**" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) "**Changes to the Work**" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

(2) **Changes Provisions.** Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the

scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) **Change Order Authority.** Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments.** Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work reasonably related to the work described in the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with applicable legal requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279C.335 & ORS 279C.400(1)

PUBLIC CONTRACTING RULES - 2023

CLASS EXEMPTIONS

E-1 Purpose and Statutory Authority

These rules establish classes of public contracts which are exempt from the formal competitive solicitation requirements of the Public Contracting Code. These exemptions may be used by Contracting Agency without additional findings of fact except as otherwise set forth herein. These exemptions are in addition to all contracting exemptions as set forth in the Code and Contracting Agency's Public Contracting Rules, Divisions 46, 47, 48, and 49. Additional contracts or classes of contracts may be expressly exempted from competitive solicitation requirements by ordinance or resolution of Contracting Agency pursuant to Contracting Agency Rules and ORS 279B.085 or 279C.335.

E-2 Advertising Contracts

Contracting Agency may purchase advertising without a competitive process, regardless of dollar value and including that intended for the purpose of giving public or legal notice.

E-3 Equipment Repair and Overhaul

Contracting Agency may enter into a public contract for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment, if required for efficient utilization of such equipment.

E-4 Contracts for Price Regulated Items

Contracting Agency may, regardless of dollar value and without competitive bidding, 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.

E-5 Copyrighted Materials

Contracting Agency may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one supplier available within a reasonable purchase area for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new books, periodicals, workbooks, curriculum materials, reference materials, audio and visual media, and non-mass-marketed software.

E-6 Investment Contracts

Contracting Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by Contracting Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or Constitution.

E-7 Requirements Contracts

(1) For purposes of this rule, "Requirements Contract" means a contract whereby the Contracting Agency has agreed to purchase as much of an identified Good or Service at a predetermined price as it requires to meet an anticipated need. Contracting Agency may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at particular prices, provided the original contract is let by a competitive procurement process.

(2) Purchase may also be made at prices established by a requirement contract or other agreement between another public body and a contractor, if the requirement contract was established by a competitive procurement process.

(3) The term of any requirement contract, including renewals, shall not exceed five years.

E-8 Office Copier Purchases

(1) Contracting Agency may enter into multiple requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such contracts shall otherwise conform to the requirements of Public Contracting Rule E-7.

(2) In exercising this exemption, Contracting Agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

E-9 Manufacturer Direct Supplies

Contracting Agency may purchase goods directly from a manufacturer without a competitive solicitation process if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis, and are not requirements contracts.

E-10 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

Contracting Agency is exempt from formal competitive procurement requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if Contracting Agency conducts an intermediate procurement and Contracting Agency awards the Contract to the Offeror offering the least expensive goods, and retains written justification for the purchase made.

E-11 Hazardous Material Removal; Oil Cleanup

Contracting Agency may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, and such DEQ order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-205 to 340-122-360. In exercising its authority under this exemption Contracting Agency shall:

(a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;

(c) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

E-12 Insurance, Employee Benefit

Contracting Agency may purchase employee benefit insurance without a competitive solicitation process, regardless of dollar amount.

E-13 Medical and Laboratory Supplies

Contracting Agency is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;
- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

E-14 Concession Agreements

(1) A concession agreement is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned or controlled by Contracting Agency, and under which the concessionaire makes payments to Contracting Agency based, in whole or in part, on the concessionaire's sales revenues. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

(2) Concession agreements are not required to be competitively bid. However, when it is in Contracting Agency's best interests to do so and in Contracting Agency's sole discretion, Contracting Agency may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

USED PERSONAL PROPERTY

E-15 Used Personal Property, Purchase of

(1) Subject to the provisions of this rule, Contracting Agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if it has determined that the purchase will be unlikely to encourage favoritism or substantially diminish competition, and will either result in cost savings to Contracting Agency or the public, or otherwise promote the public interest in a manner that could not be realized by a formal competitive solicitation process.

(2) "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of Contracting Agency purchase. "Used personal property or equipment" generally does not include property or equipment if Contracting Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(3) For purchases of used personal property or equipment, Contracting Agency shall, where feasible, obtain three competitive quotes, unless Contracting Agency has determined and documented that a purchase without obtaining competitive quotes will be unlikely to encourage favoritism or substantially diminish competition and will either result in substantial cost savings to Contracting Agency or the public, or otherwise promote public interest in a manner that could not be realized by a formal competitive solicitation process.

E-16 Surplus Personal Property, Disposition of

(1) Contracting Agency may dispose of surplus personal property by any means determined to be in the best interest of Contracting Agency, including but not limited to: transfer to other departments; donation to other government agencies, or non-profit organizations; negotiated or advertised sale; trade; auction; liquidation through commercially recognized third party liquidator; or destruction.

(2) Unless transfer or donation is otherwise exempt from public contracting, prior to surplus property, Contracting Agency must find that the chosen disposition will substantially promote the public interest in a manner that could not practicably be realized by a competitive solicitation process and either that the disposition will result in a cost savings to Agency or will probably result in a higher net return than if the property were sold by a competitive solicitation process.

(3) All items of personal property having a residual value of more than \$10,000 are subject to prior authorization of the Contract Review Authority.

PERSONAL SERVICES

E-17 Personal Services for Other than Architect, Engineer, Photogrammetrist, Transportation Planner, and Land Surveying Services

(1) Either the following procedures or those set forth in Contracting Agency's Public Contracting Rules, Division 47, will be used to retain the services of independent contractors, other than architects, engineers, land surveyors, or other professionals otherwise exempt from these Rules or the Code.

(2) Nothing in this section shall apply to the employment of regular Contracting Agency employees unless otherwise approved by the Contract Review Authority or its designee, or personal service contract.

(3) Unless otherwise approved by Contracting Agency, personal service contracts shall require the contractor to defend, indemnify, and hold harmless Contracting Agency, its officers, agents and employees from and against any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to indemnification and defense under the Oregon Tort Claims Act.

(4) Unless otherwise approved by Contracting Agency, all personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least Contracting Agency's tort liability limits, naming Contracting Agency as an additional named insured during the life of the contract.

(5) All personal service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. Contracting Agency's Attorney's Office will prepare model contract provisions for use in Contracting Agency personal service contracts.

- (6) The following procedure shall be observed in the selection of personal service contractors:
- (a) For personal service contracts involving an anticipated fee of \$25,000 or less per annum, Contracting Agency may negotiate a contract for such services with any qualified contractor it selects.
 - (b) For personal service contracts involving an anticipated fee of more than \$25,000 per annum, Contracting Agency shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.
 - (c) Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate Contracting Agency employee or by an interview committee.
 - (d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, Contracting Agency may select the prospective contractor, and shall prepare a personal service contract.
- (7) The above provisions regarding selection procedures do not apply to extensions, amendments, modifications or supplements to executed personal service contracts.
- (8) Criteria to be considered in the evaluation and selection of a personal service contractor may include, but is not limited to:
- (a) Total cost of services to Contracting Agency.
 - (b) Specialized experience in the type of work to be performed.
 - (c) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
 - (d) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.
 - (e) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
 - (f) Any other factors relevant to the particular contract.
- (9) The selection procedures described in this section may be waived by Contracting Agency, in its discretion, where an emergency exists that could not have been reasonably foreseen which requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of these selection procedures.
- (10) Contracting Agency or its designee is authorized to sign all personal service contracts, unless otherwise established by Contracting Agency policy.
- (11) Nothing contained in this section shall preclude Contracting Agency from complying with provisions of Federal or State law that require Contracting Agency to utilize a different selection or contracting procedure.

E-18 Liability Insurance Contracts

Contracts for insurance where either the annual or aggregate premium exceeds \$25,000 must be let using one of the following procedures:

- (1) Agent of Record: Contracting Agency may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility.

(a) Prior to the selection of an agent of record, Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such a selection. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website. Any such notice shall generally describe the nature of the insurance that the Contracting Agency will require.

(b) Any appointment period shall not exceed five years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(c) In selecting an agent of record, Contracting Agency shall select the agent(s) most likely to perform the most cost-effective services.

(2) Specific Proposals for Insurance Contracts: Contracting Agency may solicit proposals from licensed insurance agents or licensed insurers for the purpose of acquiring specific insurance contracts subject to the following conditions:

(a) Contracting Agency shall make reasonable efforts to inform known insurance agents or insurers in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website.

(b) Contracting Agency shall select an agent or insurer on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.



RESOLUTION NO. 2023-05

JOINT RESOLUTION OF THE BOARD OF DIRECTORS AND LOCAL CONTRACT REVIEW BOARD AMENDING PUBLIC CONTRACTING RULES FOR THE WESTERN LANE FIRE AND EMS AUTHORITY

WHEREAS, in 2020, the Western Lane Fire and EMS Authority (District) opted out of the Public Contracting Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C, as set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49 (the "Model Rules") and adopted its own Public Contracting Rules (Rules), which were most recently updated by Resolution No. 2023-01 on March 23, 2023; and

WHEREAS, the 2023 legislature adopted several amendments to Oregon's Public Contracting Code (Code), allowing further updates to the District's Rules, Divisions 46, 47, 49 and Personal Services Rules; but requiring no changes to the District's public contracting Class Exemptions; and

WHEREAS, the District Board and the District's Local Contract Review Board agree that legislative amendments to the Code should be reflected in the District's Rules.

NOW, THEREFORE, it is resolved as follows:

1. **Findings.** The findings set forth in the recitals, above, are hereby adopted as support for the amendments to the District's Public Contracting Rules.
2. **Amendments.** The following identified subsections of District Public Contracting Rules, Divisions 46, 47, 49, and E-17 adopted by Resolution No. 2023-01, Section 3 are hereby amended as follows:
 - a. Subsection 5 of Rule 137-046-0300, Preference for Oregon Goods and Services; Nonresident Bidders, is amended to read as follows:

(5) Discretionary Preference and Award.

(a) Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than: (i) ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon or (ii) five percent for Goods or Services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754, that submits with a bid or proposal a certificate of existence issued

under ORS 60.027 and has the majority of the benefit company's regular, full-time workforce located in Oregon at the time the benefit company submits the bid or proposal.

- (b) When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon.
- (c) A Contracting Agency may establish a preference percentage higher than the percentages authorized in (5)(a) of this rule by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage.
- (d) The Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

- b. Rule 137-047-0265, Small Procurements, is amended to read as follows:

137-047-0265

Small Procurements

(1) **Generally.** For Procurements of Goods or Services less than or equal to \$25,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process.

(2) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the small procurement threshold stated in subsection (1) of this Rule.

- c. Rule 137-047-0270, Intermediate Procurements, is amended to read as follows:

137-047-0270

Intermediate Procurements

(1) **Generally.** For Procurements of Goods or Services greater than \$25,000 and less than or equal to \$250,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Written Solicitations.** For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.

(3) **Negotiations.** A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.

(4) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds one hundred twenty-five percent (125%) of the intermediate procurement threshold stated in subsection (1) of this Rule.

d. Subsection 1 of Rule 137-049-0160, Intermediate Procurements; Competitive Quotes and Amendments, is amended to read as follows:

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to cost \$25,000 or more, but not to exceed \$100,000 may be Awarded in accordance with this rule.

e. The term “service-disabled veteran,” as used in District Rules 137-046-0210, 137-049-0370, and 137-049-0440, is amended to read “veteran, as defined by ORS 200.005,”

f. Subsection (6)(c) of Rule 137-049-0390 is amended to read:

Negotiation Prohibited. Except as allowed by Rules 137-049-0420(1) and 137-049-0430, the Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

g. The last sentence of Subsection (1) of Rule 137-049-0395 is amended to read:

This requirement does not apply to Award of a small, intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).

h. Subsections (6)(a) and (b) of Exemption-17, Personal Services, are hereby amended to increase the threshold of "\$10,000" to "\$25,000."

i. The first paragraph of Exemption E-18, Liability Insurance Contracts, is hereby amended to read:

Contracts for insurance where either the annual or aggregate premium exceeds \$25,000 must be let using one of the following procedures:

3. **Legal Review.** In accordance with ORS 279A.065(6)(b), the District shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules to implement Oregon Public Contracting Code amendments adopted after the 2023 legislative session in order to determine whether amendments are required to ensure statutory compliance.

4. **Continued Effect.** All unamended provisions of Resolution No. 2023-01, and all rules adopted thereby, shall remain unchanged and in full force and effect.

5. **Effective Date.** Except as identified below, this Resolution and the Rules adopted herein shall take full force and effect upon adoption. Rules 137-047-0265, 137-047-0270, and 137-049-0160 shall take effect on January 1, 2024.

Commented [LGLG1]: If this Resolution is adopted after January 1, 2024, omit this Section.

DATED this 21st day of December, 2023.

Jim Palisi, President
Board of Directors

Jim Palisi, President
Local Contract Review Board

ATTEST:

ATTEST:

Linda Stent, Secretary
Board of Directors

Linda Stent, Secretary
Local Contract Review Board

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RESOLUTION NO. 2023-06

JOINT RESOLUTION OF THE BOARD OF DIRECTORS AND LOCAL CONTRACT REVIEW BOARD AMENDING PUBLIC CONTRACTING RULES FOR THE WESTERN LANE AMBULANCE DISTRICT

WHEREAS, in 2023, the Western Lane Ambulance District (District) opted out of the Public Contracting Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C, as set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49 (the "Model Rules") and adopted its own Public Contracting Rules (Rules), which were most recently updated by Resolution No. 2023-01 on March 23, 2023; and

WHEREAS, the 2023 legislature adopted several amendments to Oregon's Public Contracting Code (Code), allowing further updates to the District's Rules, Divisions 46, 47, 49 and Personal Services Rules; but requiring no changes to the District's public contracting Class Exemptions; and

WHEREAS, the District Board and the District's Local Contract Review Board agree that legislative amendments to the Code should be reflected in the District's Rules.

NOW, THEREFORE, it is resolved as follows:

1. **Findings.** The findings set forth in the recitals, above, are hereby adopted as support for the amendments to the District's Public Contracting Rules.
2. **Amendments.** The following identified subsections of District Public Contracting Rules, Divisions 46, 47, 49, and E-17 adopted by Resolution No. 2023-01, Section 3 are hereby amended as follows:
 - a. Subsection 5 of Rule 137-046-0300, Preference for Oregon Goods and Services; Nonresident Bidders, is amended to read as follows:

(5) Discretionary Preference and Award.

(a) Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than: (i) ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon or (ii) five percent for Goods or Services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754, that submits with a bid or proposal a certificate of existence issued under ORS 60.027 and has the majority of the benefit

company's regular, full-time workforce located in Oregon at the time the benefit company submits the bid or proposal.

- (b) When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon.
- (c) A Contracting Agency may establish a preference percentage higher than the percentages authorized in (5)(a) of this rule by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage.
- (d) The Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

- b. Rule 137-047-0265, Small Procurements, is amended to read as follows:

137-047-0265

Small Procurements

(1) **Generally.** For Procurements of Goods or Services less than or equal to \$25,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process.

(2) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the small procurement threshold stated in subsection (1) of this Rule.

- c. Rule 137-047-0270, Intermediate Procurements, is amended to read as follows:

137-047-0270

Intermediate Procurements

(1) **Generally.** For Procurements of Goods or Services greater than \$25,000 and less than or equal to \$250,000, a

Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Written Solicitations.** For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.

(3) **Negotiations.** A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.

(4) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds one hundred twenty-five percent (125%) of the intermediate procurement threshold stated in subsection (1) of this Rule.

d. Subsection 1 of Rule 137-049-0160, Intermediate Procurements; Competitive Quotes and Amendments, is amended to read as follows:

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to cost \$25,000 or more, but not to exceed \$100,000 may be Awarded in accordance with this rule.

e. The term “service-disabled veteran,” as used in District Rules 137-046-0210, 137-049-0370, and 137-049-0440, is amended to read “veteran, as defined by ORS 200.005,”

f. Subsection (6)(c) of Rule 137-049-0390 is amended to read:

Negotiation Prohibited. Except as allowed by Rules 137-049-0420(1) and 137-049-0430, the Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

g. The last sentence of Subsection (1) of Rule 137-049-0395 is amended to read:

This requirement does not apply to Award of a small, intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).

h. Subsections (6)(a) and (b) of Exemption-17, Personal Services, are hereby amended to increase the threshold of “\$10,000” to “\$25,000.”

i. The first paragraph of Exemption E-18, Liability Insurance Contracts, is hereby amended to read:

Contracts for insurance where either the annual or aggregate premium exceeds \$25,000 must be let using one of the following procedures:

3. **Legal Review.** In accordance with ORS 279A.065(6)(b), the District shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules to implement Oregon Public Contracting Code amendments adopted after the 2023 legislative session in order to determine whether amendments are required to ensure statutory compliance.

4. **Continued Effect.** All unamended provisions of Resolution No. 2023-01, and all rules adopted thereby, shall remain unchanged and in full force and effect.

5. **Effective Date.** Except as identified below, this Resolution and the Rules adopted herein shall take full force and effect upon adoption. Rules 137-047-0265, 137-047-0270, and 137-049-0160 shall take effect on January 1, 2024.

Commented [LGLG1]: If this Resolution is adopted after January 1, 2024, omit this Section.

DATED this 21st day of December, 2023.

Cindy Russell, President
Board of Directors

Cindy Russell, President
Local Contract Review Board

ATTEST:

ATTEST:

Vanessa Buss, Secretary
Board of Directors

Vanessa Buss, Secretary
Local Contract Review Board

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RESOLUTION NO. 2023-06

JOINT RESOLUTION OF THE BOARD OF DIRECTORS AND LOCAL CONTRACT REVIEW BOARD AMENDING PUBLIC CONTRACTING RULES FOR THE SIUSLAW VALLEY FIRE & RESCUE

WHEREAS, in 2005, the Siuslaw Valley Fire & Rescue (District) opted out of the Public Contracting Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C, as set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49 (the "Model Rules") and adopted its own Public Contracting Rules (Rules), which were most recently updated by Resolution No. 2023-02 on March 23, 2023; and

WHEREAS, the 2023 legislature adopted several amendments to Oregon's Public Contracting Code (Code), allowing further updates to the District's Rules, Divisions 46, 47, 49 and Personal Services Rules; but requiring no changes to the District's public contracting Class Exemptions; and

WHEREAS, the District Board and the District's Local Contract Review Board agree that legislative amendments to the Code should be reflected in the District's Rules.

NOW, THEREFORE, it is resolved as follows:

1. **Findings.** The findings set forth in the recitals, above, are hereby adopted as support for the amendments to the District's Public Contracting Rules.
2. **Amendments.** The following identified subsections of District Public Contracting Rules, Divisions 46, 47, 49, and E-17 adopted by Resolution No. 2023-02, Section 3 are hereby amended as follows:
 - a. Subsection 5 of Rule 137-046-0300, Preference for Oregon Goods and Services; Nonresident Bidders, is amended to read as follows:

(5) Discretionary Preference and Award.

(a) Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than: (i) ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon or (ii) five percent for Goods or Services provided by a benefit company that is incorporated, organized, formed or created under ORS 60.754, that submits with a bid or proposal a certificate of existence issued under ORS 60.027 and has the majority of the benefit

company's regular, full-time workforce located in Oregon at the time the benefit company submits the bid or proposal.

- (b) When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon.
- (c) A Contracting Agency may establish a preference percentage higher than the percentages authorized in (5)(a) of this rule by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage.
- (d) The Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

- b. Rule 137-047-0265, Small Procurements, is amended to read as follows:

137-047-0265

Small Procurements

(1) **Generally.** For Procurements of Goods or Services less than or equal to \$25,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process.

(2) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the small procurement threshold stated in subsection (1) of this Rule.

- c. Rule 137-047-0270, Intermediate Procurements, is amended to read as follows:

137-047-0270

Intermediate Procurements

(1) **Generally.** For Procurements of Goods or Services greater than \$25,000 and less than or equal to \$250,000, a

Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Written Solicitations.** For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.

(3) **Negotiations.** A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.

(4) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds one hundred twenty-five percent (125%) of the intermediate procurement threshold stated in subsection (1) of this Rule.

d. Subsection 1 of Rule 137-049-0160, Intermediate Procurements; Competitive Quotes and Amendments, is amended to read as follows:

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to cost \$25,000 or more, but not to exceed \$100,000 may be Awarded in accordance with this rule.

e. The term “service-disabled veteran,” as used in District Rules 137-046-0210, 137-049-0370, and 137-049-0440, is amended to read “veteran, as defined by ORS 200.005,”

f. Subsection (6)(c) of Rule 137-049-0390 is amended to read:

Negotiation Prohibited. Except as allowed by Rules 137-049-0420(1) and 137-049-0430, the Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

g. The last sentence of Subsection (1) of Rule 137-049-0395 is amended to read:

This requirement does not apply to Award of a small, intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).

h. Subsections (6)(a) and (b) of Exemption-17, Personal Services, are hereby amended to increase the threshold of “\$10,000” to “\$25,000.”

i. The first paragraph of Exemption E-18, Liability Insurance Contracts, is hereby amended to read:

Contracts for insurance where either the annual or aggregate premium exceeds \$25,000 must be let using one of the following procedures:

3. **Legal Review.** In accordance with ORS 279A.065(6)(b), the District shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules to implement Oregon Public Contracting Code amendments adopted after the 2023 legislative session in order to determine whether amendments are required to ensure statutory compliance.

4. **Continued Effect.** All unamended provisions of Resolution No. 2023-02, and all rules adopted thereby, shall remain unchanged and in full force and effect.

5. **Effective Date.** Except as identified below, this Resolution and the Rules adopted herein shall take full force and effect upon adoption. Rules 137-047-0265, 137-047-0270, and 137-049-0160 shall take effect on January 1, 2024.

Commented [LGLG1]: If this Resolution is adopted after January 1, 2024, omit this Section.

DATED this 21st day of December, 2023.

Laurie Heppel, President
Board of Directors

Laurie Heppel, President
Local Contract Review Board

ATTEST:

ATTEST:

Tim Mendolia, Secretary
Board of Directors

Tim Mendolia, Secretary
Local Contract Review Board

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