

-Important Note: Any reference to Oregon University System or OUS refers instead to the Oregon Institute of Technology -

580-061-0000
Code of Ethics

(1) The following Code of Ethics will apply to Oregon University System employees in relation to chapter 580, divisions 60, 61, 62, and 63. Employees will:

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

(2) This code is for the Oregon University System's internal use only and creates no obligations enforceable by Contractors, Proposers, Bidders, or other parties doing business with an Institution, nor may it be used by Contractors, Proposers, Bidders, or other parties doing business

with an Institution who are challenging actions taken by an Institution or its officers, employees, or agents. This code may not be the only statement on ethics applicable to an employee.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0005

Applicable Model Public Contract Rules

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0010

Definitions

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

- (1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and posted on the OUS procurement website for access by all interested Offerors.
- (2) "Award" or "Awarding" means, as the context requires, identifying the Entity with whom the Public University intends to enter into a Contract following the resolution of any protest of the selection of that Entity and the completion of all Contract negotiations.
- (3) "Bid" means an offer, binding on the Bidder and submitted in response to an ITB.
- (4) "Bidder" means an Entity that submits a Bid in response to an ITB.
- (5) "Board" means the Oregon State Board of Higher Education.
- (6) "Change Order" or "Contract Amendment" means a written order issued by a Public University to the Contractor requiring a change in the Work within the general scope of the original Contract.
- (7) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Bids or Proposals.

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

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

(10) “Contract Officer” means the Vice President for Finance and Administration or his or her designee at the Public University or the Vice Chancellor for Finance and Administration or his or her designee with the authority to negotiate and execute Contracts.

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

(12) “Contractor” means the Entity awarded a Contract to furnish a Public University goods, services, or Work.

(13) “Days” means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

(14) “Disadvantaged Business Enterprise” means a small business concern as defined in ORS 200.005.

(15) “Disqualification or Disqualify” means the preclusion of an Entity from contracting with an agency of the State of Oregon in accordance with OAR 580-061-0160.

(16) “Electronic Solicitation Response” means a response to a Solicitation Document submitted to a Public University via the World Wide Web or some other internet protocol.

(17) “Emergency” means an unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, or threat to the public health or safety that requires prompt action to remedy the condition.

(18) “Emerging Small Business” means an Emerging Small Business as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(19) “Entity” means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

(20) “Grant” means:

(a) An agreement under which a Public University receives money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Public University and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Public University provides money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Public University is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.

(c) “Grant” does not include a Public Improvement Contract or a Contract for Emergency Work.

(21) “Historically Underrepresented Business” means Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses certified by the State of Oregon or self-certified, and firms certified federally or by another state or entity with substantially similar procedures to the State of Oregon.

(22) “Invitation to Bid” (ITB) means a Solicitation Document for the solicitation of competitive, written, signed, and Sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.

(23) “Minority Business Enterprise” means a Minority Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the State of Oregon.

(24) “Opening” means the date, time, and place specified in the Solicitation Document for the public opening of written or electronically submitted Solicitation Responses.

(25) “Offeror” means the entity submitting a binding Solicitation Response.

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

(27) “Owner” means the Board, in its own right or on behalf of one of its Public Universities as identified in the Solicitation Document, also known as the Oregon University System (OUS).

(28) “President” means the president of one of the Public Universities and, in the case of the Chancellor’s Office, the Chancellor. Where the term “President” is used, it refers to the president of the Public University (or Chancellor) as context requires.

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

(30) “Price Agreement” means a nonexclusive agreement in which the Contractor agrees to provide specific items or services to a Public University at a set price during a specified period of time.

(31) “Proposal” means a binding competitive offer submitted in response to a Request for Proposals.

(32) “Proposer” means an Entity that submits a Proposal in response to a Request for Proposals.

(33) “Public Improvement” means a project for construction, reconstruction, or major renovation on real property by or for a Public University. “Public Improvement” does not include:

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

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

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

(35) “Public University” means a university under the authority of the Board, including the Chancellor’s Office.

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

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

(38) “Request for Information (RFI)” means a Solicitation Document seeking information regarding products or services that a Public University is interested in procuring.

(39) “Request for Proposals (RFP)” means a Solicitation Document to obtain competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.

- (40) “Request for Qualifications” means a Solicitation Document issued by a Public University to which interested Contractors respond in writing by describing their experience with and qualifications to provide the services described in the Solicitation Document.
- (41) “Request for Quotes” means a Solicitation Document to obtain competitive quotes to be used as a basis for making an acquisition or entering into a Contract when best value will be the award criteria.
- (42) “Responsible Offeror” means an Entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.
- (43) “Responsive Solicitation Response” means a Solicitation Response that has substantially complied in all material respects with the criteria outlined in a Solicitation Document.
- (44) “Retainer Contract” means a Contract by which, pursuant to a Solicitation Document, multiple Contractors are authorized to provide specific supplies or equipment to or perform specific services for a Public Universities. Contractors on a Retainer Contract may provide goods or services on a non-exclusive and as-needed basis.
- (45) “Sealed” means a Solicitation Response to an RFP or an ITB that has not been opened by the Public University or a Solicitation Response delivered by electronic means that has not been distributed beyond the Public University personnel responsible for receiving the electronically submitted Solicitation Response.
- (46) “Signed or Signature” mean any Written mark, word, or symbol that is made or adopted by an Entity with the intent to be bound and that is attached to or logically associated with a Written document to which the Entity intends to be bound.
- (47) “Single Seller” means the only Contractor of a particular product or service reasonably available.
- (48) “Solicitation Document” means an Invitation to Bid, Request for Proposals, Request for Qualifications, Request for Information or any other written document issued or posted on the OUS procurement website by a Public University that outlines the required Specifications necessary to submit a Bid, Proposal, or other response.
- (49) “Solicitation Response” means a binding offer submitted in response to a Solicitation Document.
- (50) “Specifications” means a description of the physical or functional characteristics, or of the nature of the goods or services, including any requirement for inspecting, testing, or preparing the goods or services for delivery and the quantities or qualities of the goods or services to be furnished under a Contract. Specifications generally will state the result to be obtained and may describe the method and manner of performance.
- (51) “Women Business Enterprise” means a Women Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

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

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

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 10-2012, f. & cert. ef. 6-18-12; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0015

Purchasing and Contract Records

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

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

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

(a) An executed Contract and any amendments or Change Orders;

(b) The record of the actions used to develop the Contract;

(c) A copy of the Solicitation Document, if any;

(d) Any required findings or statement of justification for the selection of the Contractor or the procurement method used;

(e) The record of any negotiation of the Specifications, the Work, the Contract Price and related Contract terms;

(f) All information describing how the Contractor was selected, including the basis for awarding the Contract;

(g) The names of Entities and cost estimates considered.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0020

Designation of Contract Officers

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

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

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

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

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

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0025

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

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0030

Affirmative Action; General Policy

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

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

(3) Offerors will certify, as part of the Solicitation Response that such Offeror has not discriminated against Historically Underrepresented Businesses in obtaining any required subcontracts.

(4) Public Universities will comply with the OUS Equity Contracting and Purchasing Policy and Data Reporting Procedures.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 5-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; Administrative correction, 5-25-12; OUS 10-2012, f. & cert. ef. 6-18-12; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0035

Emerging Small Business Program

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

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

(b) Exclusive Emerging Small Business Opportunities. Public Universities have the authority to create opportunities that are only open to certified Emerging Small Businesses. When a Public University issues a Solicitation Document, the Public University may determine that it is in the

university's interest to limit the opportunity to only qualified and certified Emerging Small Businesses.

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

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0040

Sexual Harassment Policy

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0045

Insurance or Bond Requirements

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0050

Interest on Overdue Charges

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

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

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

Stat. Auth.: ORS 351

Stats. Implemented: ORS 293.462

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0055

Solicitation Document Provisions

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

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0060

Basis for Awarding Contracts

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0065

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

An amendment for additional Work or goods that is reasonably related to the scope of Work under the original Contract, including Change Orders, extra work, field orders, or other change in the original Specifications that increases the original Contract Price or length of time, may be made with the Contractor without using a Competitive Process provided that the amendment does not materially alter such a Contract. An amendment that extends the Contract past the period set out in the Solicitation Document for anything other than completion of the Work contemplated in the original Contract as extended will require a new Competitive Process, unless approved by the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration for good cause. Expired Contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration or their designees.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0070

Solicitation Responses are Offers

(1) Offer and Acceptance. The Solicitation Response is the Offeror's offer to enter into a Contract that will be binding upon the Offeror for thirty (30) days, unless a different time frame is specified in the Solicitation Document.

(2) The Solicitation Response will be a complete offer and fully responsive to the Solicitation Document, unless Offerors are specifically authorized by the Solicitation Document to take exceptions or to leave terms open to negotiation.

(3) Unless expressly authorized by the Solicitation Document, Offerors will not make their Solicitation Response contingent upon the Public University's acceptance of Specifications or contract terms that conflict with or are in addition to those in the Solicitation Document.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0075

Facsimile and Electronic Solicitation Responses

(1) Public Universities may authorize submission of Solicitation Responses through facsimile or electronic methods.

(2) If the Solicitation Response is in response to an RFP or ITB and the Solicitation Document permits submission via facsimile or electronic means, the Public University must establish a method of receiving, identifying, recording, and preserving the “Sealed” requirement of the Formal Procurement.

(3) Solicitation Responses submitted through facsimile and electronic methods must contain Written signatures indicating intent to be bound by the offer.

(4) Public Universities may execute or open electronic submissions to verify receipt of documents prior to the Closing, but will not verify responsiveness of Solicitation Responses.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0080

Solicitation Response Submissions

(1) Identification of Solicitation Responses. To ensure proper identification and special handling, if any, Offeror must appropriately mark its Written Solicitation Response. The Public University will not be responsible for the proper identification and handling of Solicitation Responses not submitted in the designated manner or format as required in the Solicitation Document.

(2) Receipt of Solicitation Responses. It is the Offeror’s responsibility to ensure that Solicitation Responses are received by the Public University at the required delivery point, prior to the Closing as indicated in the Solicitation Document, regardless of the method used to submit or transmit the Solicitation Response.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0085

Pre-Solicitation Response Conferences

(1) Pre-Solicitation Response conferences may be scheduled. Each pre-Solicitation Response conference will be described in the Solicitation Document as “voluntary” or “mandatory.” If such a conference is designated as “mandatory,” an Offeror must attend in order to submit a Solicitation Response.

(2) If the Offeror is an individual, the Offeror may authorize a representative other than himself/herself to attend the pre-Solicitation Response conference.

(3) Statements made by Public University representatives at the pre-Solicitation Response conference will not be binding unless a Written Addendum to the Solicitation Document is issued.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0090

Offer Security

(1) The Public University may require in the Solicitation Document submission of a security. Security includes, but is not limited to, a surety bond from a surety company authorized to do business in the state of Oregon, cashier's check, certified check, or savings and loan secured check.

(2) The Solicitation Response security of all unsuccessful Offerors will be returned or released after a Contract has been executed and a performance bond provided (if such a bond is required), or after all Solicitation Responses have been rejected.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0095

Addenda to Solicitation Document

(1) The Public University may change a Solicitation Document by Written Addenda. Public Universities will make reasonable efforts to notify potential Offerors of such Written Addenda by methods that may include, but are not limited to, publication of the Written Addenda on the OUS procurement website or requiring submission of a notice of interest by potential Offerors to receive Addenda.

(2) The Public University will issue the Written Addenda within a reasonable time prior to Closing to allow prospective Offerors to consider the Addenda in preparing their Solicitation Responses. The Public University may extend the Closing if it determines prospective Offerors need additional time to review and respond to Addenda.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0100

Clarification of ITBs and RFPs and Requests for Change

Requests for clarification or change of the ITB or RFP must be received by the Public University in writing by the date indicated in the ITB or RFP.

(1) Such request for clarification or change will include the reasons for the clarification or change, and any proposed changes to Specifications or provisions.

(2) The Public University will consider all requests for clarification or change and, if appropriate, amend the ITB or RFP by issuing Addenda.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0105

Pre-Closing Modifications or Withdrawal of Bids or Proposals

(1) Modifications. A Bidder or Proposer may modify its Bid or Proposal in Writing prior to the Closing. Any modification must include a statement that the modification amends and supersedes the prior Bid or Proposal.

(2) Withdrawals. A Bidder or Proposer may withdraw its Bid or Proposal by Written notice submitted on the Bidder or Proposer's letterhead, signed by an authorized representative of the Bidder or Proposer, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Institution prior to the Closing. The Bidder or Proposer, or authorized representative of the Bidder or Proposer, may also withdraw its Bid or Proposal in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Institution.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0110

Formal Procurement receipt, Opening, and Recording of Bids and Proposals

In all Formal Procurements a Public University will comply with the following:

(1) Receipt. A Public University will electronically or mechanically time-stamp or hand-mark each Bid or Proposal and any modification upon receipt. Except as provided in OAR 580-061-0075(2) the Public University will not open the Bid or Proposal or modification, but will store it in a secure place until Opening. If the Public University inadvertently opens a Bid or Proposal or a modification prior to the Opening, the Public University will reseal and store the opened Bid or Proposal or modification until the Opening.

(2) Disclosure. Unless otherwise specified in the Solicitation Document, the name of the Entity submitting a Bid or Proposal will be the only information that may be made public until notice of the intent to Award or an Award has been issued.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0115

Late Bids and Proposals, Late Withdrawals, and Late Modifications

Any Bid or Proposal, modification, or withdrawal received after the Closing is late. A Public University will not consider late Bids or Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120. However, Public Universities may adopt a Public University policy or procedure to accept late bids in circumstances that are determined to be in the best interests of the Public University if policy or procedure is stated in the Solicitation Document.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0120

Mistakes

(1) Generally. To protect the integrity of the Competitive Process and to assure fair treatment of Offerors, a Public University should carefully consider whether to permit waiver, correction, or withdrawal for certain mistakes.

(2) Public University Treatment of Mistakes. A Public University will not allow an Offeror to correct or withdraw a Solicitation Response for an error in judgment. If the Public University discovers certain mistakes in a Solicitation Response after Opening, but before award of the Contract, the Public University may take the following action:

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

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

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

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

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

(c) A Public University may permit an Offeror to withdraw a Solicitation Response after Closing based on one or more clerical errors in the Solicitation Response only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

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

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

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

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

(F) That the Offeror will suffer substantial detriment if the Public University does not grant it permission to withdraw the Solicitation Response;

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

(H) That the Offeror promptly gave notice of the claimed error to the Public University.

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

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0125
Low Tie Bids

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

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

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

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

(c) If neither subsection (a) nor (b) apply, award of the Contract will be made by drawing lots.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0130
Rejection of Individual Solicitation Responses and Offerors

(1) A Public University may reject, in whole or in part, any Solicitation Response not in compliance with all prescribed Solicitation Response procedures, Contract provisions, and Specifications contained in the Solicitation Document or upon a Written finding by the Public University that it is in the public interest to do so.

(2) Reasons for rejection. A Public University may reject a Solicitation Response upon the Public University's findings that include, but are not limited to, the Solicitation Response:

(a) Is contingent upon the Public University's acceptance of terms and conditions that differ from the Solicitation Document; or

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

(c) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law; or

(d) Offers goods or services that fail to meet the Specifications of the Solicitation Document; or

(e) Is late; or

- (f) Is not in substantial compliance with the Solicitation Document; or
 - (g) Is not in substantial compliance with all prescribed solicitation procedures; or
 - (h) Does not include the Solicitation Response security as required by the Solicitation Document; or
 - (i) Does not include an executed certification of non-discrimination in compliance with 580-061-00305 and compliance with Oregon tax laws.
- (3) A Public University may reject an Offeror upon the Public University's findings that include, but are not limited to, the Offeror:
- (a) Has not met any required mandatory prequalification;
 - (b) Has been disqualified pursuant to OAR 137-046-0210(3) (Disadvantaged Business Enterprise Disqualification);
 - (c) Has not met the requirements of the Emerging Small Business Program created in OAR 580-061-0035, if required in the Solicitation Document.
 - (d) That has been debarred in accordance with ORS 279B130 or 279C.440;
 - (e) Has been declared ineligible by the Commissioner of Bureau of Labor and Industries under ORS 279C.860;
 - (f) Has within the last five years been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;
 - (g) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Public University must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Public University may consider:
 - (A) If the Offeror has appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Offeror to meet all contractual responsibilities;
 - (B) If the Offeror has a satisfactory record of contract performance. The Public University may consider both private and public contracts in determining responsible performance under a contract;
 - (C) If the Offeror has a satisfactory record of integrity. An Offeror may lack integrity if a Public University determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a state agency. A Public University may find an Offeror non-Responsible based on the lack of integrity of any person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to

significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor person);

(D) If the Offeror is qualified legally to Contract with the Public University;

(E) If the Offeror has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Public University concerning responsibility, the Public University may base the determination of responsibility upon any available information or may find the Offeror non-Responsible.

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

(5) Notice. If an Offeror or a Solicitation Response is rejected in accordance with this rule, the Public University will provide written notice of such rejection to the Offeror. The notice will include the grounds for rejection and a statement of the Offeror's appeal rights and applicable appeal deadlines. If an Offeror wishes to appeal the decision to reject the Offeror or Solicitation Response, the Offeror must notify the Public University, in Writing, within three Days after receipt of the notification.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0135

Rejection of All Solicitation Responses

Rejection. A Public University may reject all Bids or Proposals whenever the Public University finds it is in the Public University's best interest to do so.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0140

Disposition of Solicitation Responses if Solicitation Cancelled

(1) Prior to Solicitation Response Opening. When a solicitation is cancelled prior to Opening, all Solicitation Responses received will be destroyed.

(2) After Solicitation Response Opening. When all Solicitation Responses are rejected, the Solicitation Responses received will be retained and become part of the Public University's permanent solicitation file.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0145

Protest of Contractor Selection, Contract Award, and Protest of Solicitation Document

(1) The purpose of this rule is to require adversely affected or aggrieved Offeror on a Public University solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the Public University's selection or Award decision.

(2) Types of Protests. The following matters may be protested:

(a) A determination of responsibility or lack thereof;

(b) A determination of responsiveness or lack thereof;

(c) The rejection of a Solicitation Response, unless notice of rejection has been previously provided under OAR 580-061-0130(5);

(d) The content of a Solicitation Document;

(e) The selection of one or more Contractors. A protest may be submitted only by an Entity that can demonstrate that it has been or is being adversely affected by a Public University decision or the content of a Solicitation Document.

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Public University within three (3) Days after the Award of a Contract or issuance of the notice of intent to Award the Contract, whichever occurs first. Protests must be clearly marked on the outside of the envelope with the title or the number of the Solicitation Response and that it is a protest to ensure that it is recognized and recorded.

(4) Content of Protest. An Offeror's protest must fully specify the grounds for the protest and include all evidence that the protestor wishes the Vice Chancellor for Finance and Administration, Public University Vice President for Finance and Administration, or designee to consider. Failure to include any ground for the protest or any evidence in support of it will constitute a final, knowing, and voluntary waiver of the right to assert such ground or evidence. A protest must include a conspicuous marking identifying the type and nature of the protest.

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

(6) A protest of the selection of one or more Contractors requires the protestor to demonstrate, as applicable;

(a) That all higher-ranked Offerors were ineligible for selection or that the protestor would have been “next in line” to receive the Award and was eligible for selection; and

(b) That the Offeror selected was ineligible.

(c) In the case of a sole source procurement, that the Single Seller selected is not the only Contractor or consultant reasonably available to provide the personal or professional services, goods, services, Professional Consultant services as defined in OAR 580-061-0010, Construction-Related Services as defined in OAR 580-061-0010, or combination of Professional Consultant services and Construction-Related Services.

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

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

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 7-2008(Temp), f. & cert. ef. 6-5-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0150

Right to Inspect Plant

The Institution may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any subcontractor that is related to the performance of any prospective Contract or Awarded Contract.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; Administrative Correction 6-24-15

580-061-0155

Invitation to Bid and Request Proposal Negotiations

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

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

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

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

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

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

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

(4) Negotiations.

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

(b) The Public University may negotiate:

(A) The statement of Work;

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

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

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13

580-061-0160

Disqualification from Consideration for Award of Contracts

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

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

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

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

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

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

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

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

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

(3) A Public University will issue a Written decision to disqualify an Entity under this section. The decision will:

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

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

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

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

(6) The OUS Vice Chancellor of Finance and Administration, or designee, will conduct the appeal generally consistent with the procedures set forth in ORS 279C.450. The OUS Vice Chancellor of Finance and Administration, or designee, may share the final outcome of the appeal with all Public Universities.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08; OSSHE 9-2008, f. & cert. ef. 7-21-08; OUS 2-2013(Temp), f. & cert. ef. 4-10-13 thru 9-30-13; OUS 6-2013; f. & cert. ef. 11-1-13