

## POLICY CONCEPT FORM

<b>Name and UO Title/Affiliation:</b>	Angela Wilhelms, University Secretary
<b>Policy Title &amp; # (if applicable):</b>	580.061 (renumbered to IV.09.06) – OUS Procurement and Contracting Code
<b>Submitted on Behalf Of:</b>	Greg Shabram, Chief Procurement Officer
<b>Responsible Executive Officer:</b>	VP and General Counsel

**SELECT ONE:**  New Policy  Revision  Repeal

*Click the box to select*

**HAS THE OFFICE OF GENERAL COUNSEL REVIEWED THIS CONCEPT:**  Yes  No

**If yes, which attorney(s):** Craig Ashford

### GENERAL SUBJECT MATTER

*Include the policy name and number of any existing policies associated with this concept.*

**Regulations pertaining to procurement and contracting; a former Oregon University System Administrative Rule inherited by the UO with institutional governance.**

### RELATED STATUTES, REGULATIONS, POLICIES, ETC.

*List known statutes, regulations, policies (including unit level policies), or similar related to or impacted by the concept. Include hyperlinks where possible, excerpts when practical (e.g. a short statute), or attachments if necessary. Examples: statute that negates the need for or requires updates to an existing policy; unit level policy(ies) proposed for University-wide enactment; or existing policies used in a new, merged and updated policy.*

As referenced in the policy: ORS 200.005 (Minority Business Enterprise); ORS 279, 279B, and 279C (Public Contracting); ORS 293 (Administration of Public Funds); OAR 137-046-0210(3) (Disadvantaged Business Enterprise)

### STATEMENT OF NEED

*What does this concept accomplish and why is it necessary?*

There are two sets of changes in the attached. One is the removal of section K(2) (see page 10) in whole. This section is no longer applicable to the UO and having it in policy is confusing should someone read it and believe it to be.

All other redlines in the policy are technical updates that could be made by the Secretary without going through the policy revision process. For ease, however, we are doing them all in one document. These are changes such as updating references to the state board to the UO board, and changing old OAR or policy numbers to their new numbers.

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### **AFFECTED PARTIES**

*Who is impacted by this change, and how?*

NA – As the paragraph to be removed is already not applicable to the UO there is no one affected by the change

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### **CONSULTED STAKEHOLDERS**

*Which offices/departments have reviewed your concept and are they confirmed as supportive? (Please do not provide a list of every individual consulted. Remain focused on stakeholders (e.g. ASUO, Office of the Provost, Registrar, Title IX Coordinator, etc.).)*

<b>Name</b>	<b>Office</b>	<b>Date</b>
<b>Greg Shabram</b>	<b>Purch. And Contracting Svcs</b>	<b>15 Oct 2019</b>
<b>Craig Ashford</b>	<b>General Counsel</b>	<b>8 Nov 2019</b>
<b>Darin Dehle</b>	<b>CPFM</b>	<b>Mult.</b>

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## Reason for Policy

This policy outlines matters pertaining to procurement and contracting at the University.

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## Entities Affected by this Policy

Finance & Administration; all campus entities or business units engaged in purchasing, contracting or procurement.

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## Web Site Address for this Policy

[to be updated once posted]

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## Responsible Office

For questions about this policy, please contact Purchasing and Contracting Services at 541-346-2416 or [uop2help@uoregon.edu](mailto:uop2help@uoregon.edu)

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## Enactment & Revision History

Policy renumbered to IV.09.06 (from 580.061, et sq) and amendments approved by President Schill on [date].

Technical revisions enacted by the University Secretary on September 3, 2015.

Became a University of Oregon Policy by operation of law on July 1, 2014.

Former Oregon Administrative Rule Chapter 580 Division 61, exclusive of Section 0000.

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## Policy

### A. 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 the University unless specifically referenced and adopted herein.

### B. Definitions

The following Definitions will apply to UO policies IV.09.05, IV.09.06, IV.07.06 and IV.07.10, 580.060, 580.061, 580.062, and 580.063, 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 University procurement website for access by all interested Offerors.
- (2) "Award" or "Awarding" means, as the context requires, identifying the Entity with whom the 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 Board of Trustees of the University of Oregon.
- (6) "Change Order" or "Contract Amendment" means a written order issued by the 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 the 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 the 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 with the authority to negotiate and execute Contracts.
- (11) "Contract Price" means, as the context requires, the maximum monetary obligation that the 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 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 Section FF.

(16) "Electronic Solicitation Response" means a response to a Solicitation Document submitted to the 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 the 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 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 the 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 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-UO~~ 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 a ~~an~~ ~~OUS-UO~~ Retainer Program may provide goods or services on a non-exclusive and as-needed basis. ~~OUS-UO~~ 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 the University as identified in the Solicitation Document.

(28) "President" means the President of the University. Where the term "President" is used, it refers to the president of the University 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 the 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 the University. "Public Improvement" does not include:

(a) Projects for which no funds of the 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) " University" means the University of Oregon. .

(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 the 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 the 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 below in Section AA.

(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 the 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 University or a Solicitation Response delivered by electronic means that has not been distributed beyond the 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 University procurement website by the 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.

### **C. Purchasing and Contract Records**

(1) The University will maintain records relating to all University purchasing and contracting transactions in accordance with the requirements of the Secretary of State and University policies.

(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) The University will maintain records relating to all University 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.

#### **D. Designation and Contract Officers**

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

(1) The University 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. The Vice President for Finance and Administration may designate staff authorized to enter into Contracts and Public Improvement Contracts on behalf of the University.

(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 University Procurement and Contracting Code will be voidable at the sole discretion of the University. The University may take appropriate action in response to execution of Contracts or procurements contrary to this policy. 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 UO policies IV.09.05, IV.09.06, IV.07.06 and IV.07.10, ~~580.060, 580.061, 580.062, and 580.063.~~

(4) Unless otherwise specified in policies IV.09.05, IV.09.06, IV.07.06 and IV.07.10, ~~580.060, 580.061, 580.062, and 580.063~~, 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, transfer such delegation to a person at another Public University.

#### **E. Policy Governing the Acquisition of Goods and Services available from Qualified Rehabilitation Facilities**

The University 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.

#### **F. Affirmative Action; General Policy**

(1) The general policy of the University will be to expand economic opportunities for Historically Underrepresented Businesses by offering them the contracting and subcontracting opportunities available through 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 University procurement website. The University is encouraged to unbundle contracts, when appropriate, to expand contract opportunities for Historically Underrepresented Businesses and Oregon-based businesses.

(2) The University 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) The University will comply with the Equity Contracting and Purchasing Policy and Data Reporting Procedures.

### **G. Emerging Small Business Program**

(1) The University 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(35) and that maintain a current certification issued by the State of Oregon. When conducting procurements, the University 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. The University has the authority to create opportunities that are only open to certified Emerging Small Businesses. When the University issues a Solicitation Document, the 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. The 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 University will award the Contract to the Emerging Small Business.

### **H. Sexual Harassment Policy**

All Entities that wish to contract with the University will be notified on the University procurement website that the University has adopted policies applicable to Contractors that

prohibit sexual harassment and that the Contractor's company and employees are required to adhere to the University's policy prohibiting sexual harassment in their interactions with members of the University's community.

### **I. Insurance or Bond Requirements**

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

### **J. Interest on Overdue Charges**

The ~~policy of the Board is that the~~ University will pay any overdue account charge, in accordance with ORS 293.462, incurred by the University 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 the University 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.

### **K. Solicitation Document Provisions**

(1) Brand-Name Specification. The University 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, the University 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 University 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."~~

### **L. Basis for Awarding Contracts**

The University 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.

#### **M. 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 for good cause. Expired Contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or their designees.

#### **N. 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 University's acceptance of Specifications or contract terms that conflict with or are in addition to those in the Solicitation Document.

#### **O. Facsimile and Electronic Solicitation Responses**

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

#### **P. 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 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 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.

#### **Q. 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 University representatives at the pre-Solicitation Response conference will not be binding unless a Written Addendum to the Solicitation Document is issued.

#### **R. Offer Security**

(1) The 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.

#### **S. Addenda to Solicitation Document**

(1) The University may change a Solicitation Document by Written Addenda. The University 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 University

procurement website or requiring submission of a notice of interest by potential Offerors to receive Addenda.

(2) The 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 University may extend the Closing if it determines prospective Offerors need additional time to review and respond to Addenda.

#### **T. Clarification of ITBs and RFPs and Requests for Change**

Requests for clarification or change of the ITB or RFP must be received by the 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 University will consider all requests for clarification or change and, if appropriate, amend the ITB or RFP by issuing Addenda.

#### **U. Pre-Closing Modifications or Withdrawal of Bids or Proposals**

(1) Modifications. An Offeror may modify its Solicitation Response in Writing prior to the Closing. Any modification must include a statement that the modification amends and supersedes the prior Solicitation Response.

(2) Withdrawals. An Offeror may withdraw its Solicitation Response by Written notice, signed by an authorized representative of the Offeror, submitted to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the University prior to the Closing. The Offeror, or authorized representative of the Offeror, may also withdraw its Solicitation Response in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the University.

#### **V. Formal Procurement Receipt, Opening, and Recording of Bids and Proposals**

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

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

#### **W. Late Bids and Proposals, Late Withdrawals, and Late Modifications**

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

#### **X. Mistakes**

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

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

(a) The 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) The 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 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) The 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 section;

(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 University does not grant it permission to withdraw the Solicitation Response;

(G) That the 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 University or the public it represents; and

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

(d) The criteria in subsection (2)(a) of this section will determine whether the University will permit an Offeror to withdraw its Solicitation Response after Closing. These criteria also will apply to the question whether the 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 University based on the difference between the amount of the Offeror's Solicitation Response and the amount of the Contract actually awarded by the 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 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.

## **Y. 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 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.

## **Z. Rejection of Individual Solicitation Responses and Offerors**

(1) The 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 University that it is in the public interest to do so.

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

(a) Is contingent upon the 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 Section G and compliance with Oregon tax laws.

(3) The University may reject an Offeror upon the 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 Section G, 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 University must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the 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 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 the 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. The 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 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 University concerning responsibility, the 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 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 policy.

(5) Notice. If an Offeror or a Solicitation Response is rejected in accordance with this policy, the 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 University, in Writing, within three Days after receipt of the notification.

#### **AA. Rejection of All Solicitation Responses**

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

#### **BB. 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 University's permanent solicitation file.

#### **CC. Protest of Contractor Selection, Contract Award, and Protest of Solicitation Document**

(1) The purpose of this section is to require adversely affected or aggrieved Offeror on University solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the 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 Section Z(5) of this policy;

(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 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 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 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 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 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 Section B, Construction-Related

Services as defined in Section B, or combination of Professional Consultant services and Construction-Related Services.

(7) A protest of the rejection of a Solicitation Response must demonstrate that the University's decision was materially in error or that the 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 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 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 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 President for Finance and Administration, or their designee.

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

#### **DD. Right to Inspect Plant**

The University 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.

#### **EE. Invitation to Bid and Request Proposal Negotiations**

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

(2) The University may, if it has given notice in the Solicitation Document, commence negotiations in accordance with sections EE(3) and EE(4) 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 University chooses to enter into discussions with and receive best and final Proposals, the University will proceed as follows:

(a) The 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 University identified in the Solicitation Document as the subject of discussions.

(b) The 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 University may terminate discussions with any eligible Proposer at any time. However, the University will offer all eligible Proposers the same opportunity to discuss their Proposals with the University before the University notifies eligible Proposers of the date and time pursuant to subsection (d) that best and final Proposals will be due.

(c) The 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 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 University may make a written determination that it is in the University's best interest to conduct additional discussions, negotiations, or change the University's requirements and require another submission of best and final Proposals. The University will evaluate Proposals as modified.

(4) Negotiations.

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

(b) The 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 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.

#### **FF. Disqualification from Consideration for Award of Contracts**

(1) The University may disqualify an Entity from consideration for award of 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) The University may rely upon a disqualification of an Entity by another Public University or exclusion by the federal government or the State of Oregon.

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

(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 the 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) The 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 University in Writing that the Entity appeals the disqualification. Immediately upon receipt of the notice of appeal, the University will notify the Vice President for Finance and Administration, or designee.

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

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#### Related Resources

N/A