Minutes of Board Meeting – June 20, 2012

Steve Olienyk, President of the Board, called the meeting to order at 5:31 p.m.

BOARD MEMBERS PRESENT: Directors Steve Olienyk, Cindy Spinner, Lori Gates, John Scott, and Rob Ward were in attendance.

OTHERS PRESENT: Chief John Buchanan, Division Chief Janet Huston, and Division Chief Marvin Tipler were in attendance.

APPROVAL OF MINUTES: Director Gates made a motion to approve the minutes of the regular board meeting held on May 9, 2012. The motion was seconded by Director Spinner and was approved by unanimous vote.

APPROVAL OF BUDGET COMMITTEE MINUTES: Director Scott made a motion to approve the minutes of the Fire District Budget meeting held on May 30, 2012. The motion was seconded by Director Ward and was approved by unanimous vote.

COMMUNICATIONS: None

PUBLIC HEARING REGARDING THE ANNUAL BUDGET: Board President Steve Olienyk opened the Public Hearing at 5:35 p.m. in order to take testimony relating to the 2012-2013 Annual Budget. There being no comments, the Public Hearing was closed at 5:40 p.m.

There followed a motion made by Director Scott to read Resolution 2012-02 Title Only, a resolution to adopt, appropriate, impose, and categorize taxes for fiscal year 2012/2013. The motion was seconded by Director Gates and was approved by unanimous vote.

Director Scott made a motion to adopt Resolution 2012-02. The motion was seconded by Director Gates and was approved by unanimous vote.

PUBLIC COMMENTS: None

FIRE DISTRICT INCIDENT REPORT: The report reflecting the activity during May 2012 was reviewed and various incidents were discussed.

FIRE DISTRICT TRAINING REPORT: The report reflecting training in May 2012 was reviewed.

SAFETY MEETING MINUTES: The Safety Minutes of the May 2012 meeting were reviewed.

REGULAR AGENDA:

Chief Buchanan presented the Resolution 2012-03 to amend compensation of certain personnel
as approved by the budget committee. **Director Gates made a motion to read Resolution 2012-03 Title Only, a resolution adjusting the compensation of certain full-time and part-time employees. The motion was seconded by Director Spinner and was approved by unanimous vote.**

**Director Gates made a motion to adopt Resolution 2012-03. The motion was seconded by Director Spinner and was approved by unanimous vote.**

Chief Buchanan presented the Extension of Service Agreement which continues the services of John D. Buchanan as fire chief for an additional 18 months, expiring December 31, 2013. **Director Ward made a motion to acknowledge and accept the Extension of Service Agreement of John D. Buchanan as Fire Chief. The motion was seconded by Director Scott and was approved by unanimous vote.**

**PUBLIC HEARING FOR PUBLIC CONTRACTING RULES**

Board President Olienyk recessed the regular meeting at 5:52 p.m. and opened the public hearing to take testimony relating to the adoption of the 2011 Public Contracting Rules. There being no comments or testimony, Board President Olienyk closed the public hearing at 5:53 p.m., and reconvened the regular board meeting at which time **Director Scott made a motion to adopt Resolution 2012-04 adopting the 2011 Public Contracting Rules. The motion was seconded by Director Gates and passed by unanimous vote.**

**REVIEW OF THE BILLS:**

**MOTION:** **Director Gates made a motion to ratify bills paid during the past month totaling $141,671.29 and transfers from the Money Market Account to the Checking Account also made during the past month. The motion was seconded by Director Spinner and was approved by unanimous vote.**

**FINANCIAL STATEMENTS:** The financial statements were provided.

**FUTURE AGENDA BUSINESS:** Board President Olienyk stated that the next regularly scheduled board meeting will be Wednesday, July 18, 2012 at 5:30 p.m.

There being no further business to come before the Board, the meeting was adjourned at 6:04 p.m.

Respectfully submitted,

**JANET L. HUSTON**
Division Chief of Administration
SIUSLAVAL FIRE AND RESCUE
"Protection with Pride"

Resolution No. 2012-02
Resolution to Adopt, Appropriate, Impose, and Categorize Taxes

Resolution Adopting the Budget

Be it resolved that the Board of Directors of Siuslaw Valley Fire and Rescue hereby adopts the budget for fiscal year 2012-2013 in the sum of $1,890,145., now on file at Siuslaw Valley Fire and Rescue located at 2625 Highway 101 North in Florence, Oregon.

Resolution Making Appropriations

Be it resolved that the amounts for the fiscal year beginning July 1, 2012, and for the purposes shown below, are hereby appropriated:

<table>
<thead>
<tr>
<th>General Fund</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$899,031.</td>
</tr>
<tr>
<td>Materials and Services</td>
<td>$340,970.</td>
</tr>
<tr>
<td>Capital Outlay</td>
<td>$278,902.</td>
</tr>
<tr>
<td>General Operating Contingency</td>
<td>$150,000.</td>
</tr>
<tr>
<td>Debt Service</td>
<td>$221,242.</td>
</tr>
<tr>
<td><strong>Fund Total</strong></td>
<td><strong>$1,890,145.</strong></td>
</tr>
</tbody>
</table>

Total Adopted Budget

$1,890,145.

Resolution Imposing and Categorizing Taxes

Be it resolved that the Board of Directors of Siuslaw Valley Fire and Rescue hereby imposes the taxes provided for in the adopted budget at the rate of $0.8891 per $1,000 of assessed value for operations; and that these taxes are hereby imposed and categorized for tax year 2012-2013 upon the assessed value of all taxable property within the District, as follows:

<table>
<thead>
<tr>
<th>General Government</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>$.8891/$1,000</td>
</tr>
</tbody>
</table>

The above resolution statements were approved and declared adopted on the 20th day of June, 2012.

[Signatures]

Steve Devenyi, Board President

Lori Gates, Secretary
Resolution No. 2012-03
Resolution Adjusting the Compensation of Certain Full-time and Part-time Employees

WHEREAS, the Board of Directors and the Budget Committee have accepted the Budget Committee’s recommendation for a three percent Cost of Living Increase for certain full-time and part-time employees; and

WHEREAS, the fire administration has budgeted and recommended the following compensation adjustments;

THEREFORE BE IT RESOLVED THAT the Board of Directors of the Siuslaw Valley Fire and Rescue No. 1 establishes the compensation rate for certain full-time and part-time positions for the fiscal Year 2012-2013, as follows:

**FULL-TIME POSITIONS**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Chief</td>
<td>$93,456</td>
</tr>
<tr>
<td>Division Chief of Administration</td>
<td>$61,500</td>
</tr>
<tr>
<td>Division Chief of Fire Prevention (Fire Marshal)</td>
<td>$61,500</td>
</tr>
<tr>
<td>Division Chief of Operations</td>
<td>$61,500</td>
</tr>
<tr>
<td>Battalion Chief</td>
<td>$57,516</td>
</tr>
<tr>
<td>Firefighter/Engineer (2) – Salary Adjustment</td>
<td>$84,216</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>$36,300</td>
</tr>
</tbody>
</table>

**PART-TIME POSITIONS**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training Officer</td>
<td>$25,300</td>
</tr>
<tr>
<td>Citizen Volunteer Coordinator</td>
<td>$7,000</td>
</tr>
</tbody>
</table>

CALL RESERVE FIREFIGHTERS
RECRUITMENT AND RETENTION OFFICER

$10 per Emergency Event
$15 per hour

PASSED AND ADOPTED this 20th date of June, 2012.

Steve Ollenyk, Board President
Lori Gates, Secretary
SIUSLAW VALLEY FIRE AND RESCUE

EMPLOYMENT AGREEMENT

EXTENSION OF SERVICES

This agreement is between JOHN D. BUCHANAN (Employee) and SIUSLAW VALLEY FIRE AND RESCUE (District)

1. Employment: The District agrees to continue the employment of Employee as Fire Chief for an additional 18 months. This extension will continue services of the Employee until December 31, 2013.

2. Salary and benefits to remain the same as past Employee Agreement, Extension of Services, dated December 22, 2003 and as approved in the 2012-2013 Operating Budget.

3. Employee, because of his age and Social Security status, is permitted under Section ORS 238.028 of the Public Employees Retirement System to retire from the PERS system, but continue his full employment. Upon retirement from the PERS System, the Fire District will no longer contribute to the PERS System on behalf of the Employee, which will in turn reduce the total PERS Contribution for the District.

By
Steve Olienyk, Board President

[Signature]

Date: 6/20/2012

John D. Buchanan, Fire Chief

[Signature]

Date: 6-20-2012
SIUSLAW VALLEY FIRE AND RESCUE
"Protection with Pride"

Resolution No. 2012-04


WHEREAS, the 2011 Oregon legislature adopted certain amendments to Oregon’s Public Contracting Code and the Attorney General has modified its Model Public Contracting Rules, accordingly; and

WHEREAS, ORS 279A.065(5)(b) requires a local contracting agency to review all legislative changes and update its local public contracting rules to ensure statutory compliance each time the Attorney General modifies its Model Rules; and

WHEREAS, the 2011 legislature amended the Public Contracting Code to require all local contracting agencies to utilize a qualifications-based solicitation (QBS) for certain contracts with architects, engineers, and land surveyors, and added two professions to this list of specialized professionals; and

WHEREAS, the local contract review board and District Board have determined to make the following amendments to the District’s public contracting rules in compliance with these legislative amendments to the Oregon Public Contracting Code; and

WHEREAS, no amendments affect the District’s previously established public contracting exemptions or rules not listed below.

NOW, THEREFORE, it is resolved as follows:

1. Amendments. The District hereby amends the rules adopted by Resolution Nos. 2011-02 and 2008-01 establishing Public Contracting Rules, as follows: Chapter 137, Division 47, Rule 0260; Chapter 137, Division 48, Rules 0100 through 0320; and Chapter 137, Division 49, Rule 0860 are hereby repealed and replaced with the rules set forth in the pages attached and incorporated herein as Exhibit A.

2. Prior Acts. All provisions of District’s previously adopted Joint Resolution of the District Board and Public Contract Review Board adopting District’s existing Public Contracting Rules, with the exception of the above amendments, shall continue in full force and effect.

3. Effective Date. This Resolution shall take immediate effect and be in full force and effect when adopted by the Board and signed by the President of the Board of Directors.

DATED this 20th day of June, 2012.

President
Board of Directors

President
Local Public Contract Review Board
such is not the case, the Contracting Agency may issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in subsection (5)(e) of this rule.

(e) Discussion of Un-priced Technical Bids. The Contracting Agency may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one un-priced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Close of the final step established by the Contracting Agency. Such submission may be made at the request of the Contracting Agency or upon the Bidder's own initiative.

(f) Notice of Ineligible Un-priced Technical Bid. When the Contracting Agency determines a Bidder's un-priced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bid.

(g) Mistakes During Multistep Sealed Bidding. Mistakes may be corrected or Bids may be withdrawn during phase one:

(A) Before un-priced technical Bids are considered;
(B) After any discussions have commenced under subsection(5)(a);
(C) When responding to any Addenda of the Invitation to Bid; or
(D) In accordance with Rule 137-047-0470.

(6) Procedure for Phase Two of Multistep Sealed Bids:

(a) Initiation. Upon the completion of phase one, the Contracting Agency shall either:

(A) Open price Bids submitted in phase one (if price Bids were required to be submitted) from Bidders whose un-priced technical Bids were found to be eligible; or
(B) If price Bids have not been submitted, technical discussions have been held, or Addenda to the Invitation to Bid have been issued, invite each eligible Bidder to submit a price Bid.

(b) Conduct. Phase Two shall be conducted as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule;
(B) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.001
Stats. Implemented: ORS 279B.005

137-047-0330

Competitive Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed Proposal as set forth in Rule 137-047-0330.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:

(a) General Information.

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

(i) The time, date and location of any pre-Offer conference; and
(ii) Whether attendance at the conference will be mandatory or voluntary; and

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

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

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

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

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See Rule 137-047-0430).

(b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.080(2)(c), the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and
(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning and land surveying services or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.080(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency; and

(C) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to Rule 137-047-0600(4)(d), the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award;

(d) Applicable Preferences, including those described in ORS 278A.120, 278A.125(2) and 282.210;

(e) For Contracting Agencies subject to ORS 305.385, Proposer's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the Goods or Services without prior written approval from the Contracting Agency. Pursuant to ORS 279B.060, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract;

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

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

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

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

(A) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(B) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(C) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(D) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods and Services to be delivered under the resulting Contract.
CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIST, TRANSPORTATION PLANNING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

137-048-0110
Application
These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetricists, Transportation Planners, Land Surveyors and providers of Related Services under Contracts, and set forth the following procedures:
(a) Procedures through which Contracting Agency selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
(b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetricists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by a Local Government.

Stats. Implemented: ORS 279A.085, OL 2011, ch 458

137-048-0110
Definitions
In addition to the definitions set forth in ORS 279A.010, 279C.100, and Rule 137-046-0110, the following definitions apply to these division 48 rules:
(1) "Consultant" means an Architect, Engineer, Photogrammetricist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetryists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.
(2) "Estimated Fee" means Contracting Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.
(3) "Price Agreement," for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include price or Consultant compensation information, with:
(a) No guarantee of a minimum or maximum purchase; or
(b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.
(4) "Project" means all components of a Contracting Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
(5) "Transportation Planning Services" include only Project-specific transportation planning involved in categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
(6) "Related Services" means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services,
material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner’s representation services or land-use planning services.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0120
[Reserved.]

137-048-0130
Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest
(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agency shall follow the applicable selection procedure under either Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). For projects utilizing Informal or Formal Selection Procedures, Contracting Agency may solicit or use pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant’s compensation only after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) When selecting Consultants to perform Related Services Contracting Agency shall follow either its Division 47 or Division 48 rules, as determined in its sole discretion.

(3) A Contracting Agency is not required to follow the procedures in Section (1) of Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of Rule 137-048-0270 (Price Agreements).

(4) Contracting Agency may use electronic methods to screen and select a Consultant in accordance with the procedures described in Rule 137-047-0330 (Electronic Procurement).

(5) For purposes of these Division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency’s classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involve the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and Section (1) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and Section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and Divisions 48, 47 and 49 of these Rules that match the predominant purpose of the Contract.

(6) Consultant with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals submitted under these Division 48 Rules.
(b) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agency may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agency may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant.
(c) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.
As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agency may not:

(a) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services;

(b) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services.

The requirements of ORS 279C.307 and Section (7) of this rule apply in the following circumstances, except as provided in Section (8) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (B)(a) of this rule.

The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in Rule 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as described in Rule 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administrating, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement..

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 278A.065, 279C.100-279C.125, OL 2009, ch 880, sec. 11, OL 2011, ch 458

SELECTION PROCEDURES

137-048-0290
Direct Appointment Procedure

(1) Contracting Agency may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:
(a) Contracting Agency finds that an Emergency exists; or
(b) The Estimated Fee to be paid under the Contract does not exceed $100,000; or
(c) The following requirements are met:
   (A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract; and
   (B) Contracting Agency used either the formal selection procedure under Rule 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract;
   (C) Continuation of Project With Extensive Estimated Fee. Where a Project is being under subsection 1(c) of this rule, and the Estimated Fee is expected to exceed $250,000, the Contracting Agency must make written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:
      (A) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and
      (B) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.
(2) Contracting Agency may select a Consultant for a Contract under this rule from any and all Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.
(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:
   (a) The Consultant's performance obligations and performance schedule;
   (b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
   (c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

Stats. Implemented: ORS 279C.110 & 279C.115, OL 2011, ch 458

137-048-0210
Informal Selection Procedure
(1) Contracting Agency may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed $250,000.
(2) Contracting Agency using the informal selection procedure shall:
   (a) Create a Request for Proposals that includes at a minimum the following:
      (A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;
      (B) The anticipated Contract performance schedule;
      (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
      (D) The date and time Proposals are due and other directions for submitting Proposals;
      (E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:
         (i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; (ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals; (iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services,
including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP; and

(G) A statement directing Proposers to the protest procedures set forth in those Division 48 rules.

(b) Provide a Request for Proposals to a minimum of three (3) prospective Consultants drawn from any and all Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals.

(3) If Contracting Agency does not cancel the RFP after it reviews and ranks each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(4) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with Section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the Proposers do not result in a Contract within a reasonable amount of time, the Contracting Agency may and the particular Informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under Rule 137-048-0220 (Formal Selection Procedure).

(5) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under Rule 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $250,000.

Stat. Auth.: ORS 278A.085, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, OL 2011, ch 458


137-048-0220
Formal Selection Procedure

(1) Contracting Agency shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agency's discretion.

(2) When using the formal selection procedure Contracting Agency shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(a) Except as provided in subsection (2) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as desired by Contracting Agency to achieve adequate competition. Other issues and
publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(b) Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFQ and RFP by one or more of the electronic methods identified in Rule 137-048-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(3) Request for Qualifications Procedure. Contracting Agency may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking Consultants;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underserved businesses;

(i) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;

(j) Consultants' ability to assist Contracting Agency in complying with the solar energy technology requirements of OGS 270C.527; and

(k) Any other information Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

42
(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
(B) Placing a pre-determined number of the highest scoring Consultants on a short list;
(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.
(d) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(c) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.
(e) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.
(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agency shall use the procedure described in this Section (4) of this rule when issuing an RFP for a Contract described in Section (1) of this rule.
(a) RFP Required Contents. Contracting Agency using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:
(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.
(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:
(I) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
(II) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;
(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
(iv) The recent, current and projected workloads of the staff and resources referenced in subsection (4)(a)(3)(ii), above;
(v) The proportion of time Proposers estimate that the staff referenced in subsection (4)(a)(3)(ii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance;
(vii) References and recommendations from past clients;
(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;
(ix) Status and quality of any required license or certification;
(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;
(xi) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
(xii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and
(xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.
(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;

(I) A statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Evaluation Committee. The Contracting Agency shall either establish a committee or designate an individual to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFO, the Contracting Agency may include the same members who served on the RFO evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agency with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of an evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. If formed, the Contracting Agency shall designate a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals,

partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;

(c) If the Contracting Agency does not cancel the RFP after completing the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) The Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(d) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with subsection (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may and the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services described in the RFP that failed to result in a Contract.
137-048-0230
Ties Among Proposers

(1) If Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this Section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under Rules 137-048-0210(3) or 137-048-0220(4)(c), as applicable.

(2) If Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in Rule 137-046-0300 (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, OL 2011, ch 458
Hist.: DOJ 1-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0240
Protest Procedures

(1) RFP Protest and Request for Change. Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

(2) Protest of Consultant Selection.

(a) Single Award. In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of the selection notice that the Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) Resolution of Protests. A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065 & 279C.110, OL 2011, ch 458

45
137-048-0250
Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs
A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (Rule 137-048-0220), the Informal Selection Procedure (Rule 137-048-0210), or the Formal Selection Procedure (Rule 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing. If the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents.

Stat. Auth.: ORS 279A.085
Stat. Implemented: ORS 279A.085, 279C.110

137-048-0260
Two-Tiered Selection Procedure when State Agency is Lead Contracting Agency
(1) If the Contracting Agency requires an Architect, Engineer, Photogrammist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammists, Transportation Planners, or Land Surveyors.
(2) Tier One. The State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP pursuant to its own rules or, if permitted by state, by these Division 48 rules applicable selection procedures described in from among Architects, Engineers, Photogrammists, Transportation Planners, or Land Surveyors, and shall notify Contracting Agency of the Architects, Engineers, Photogrammists, Transportation Planners, or Land Surveyors selected.
(3) Tier Two. In accordance with the qualifications based selection requirements of ORS 279C.110, Contracting Agency shall either:
   (a) Select an Architect, Engineer, Photogrammist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or
   (b) Select an Architect, Engineer, Photogrammist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these Division 48 rules.
Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of Contracting Agency and may include provisions to allow Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:
   (A) A general written direction from Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with Contracting Agency is required. However, Contracting Agency may provide written notice to the State Contracting Agency that Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that Contracting Agency will utilize for the particular Procurement. In order for a written direction from Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier
two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between Contracting Agency and the State Contracting Agency outlining the alternative process that Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) Contracting Agency or State shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in Rule 137-048-0220 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by Contracting Agency.

Stat. Auth.: ORS 279A.055, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, 279C.125, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0370

Price Agreements

(1) Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with Rule 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agency may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) Solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:
   (a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;
   (b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion; provided, however, in circumstances where a direct contract is not permitted under Rule 137-048-0200, the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. In accordance with Rule 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of Rule 137-048-0200; and
   (c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the
Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:
(a) A clearly defined statement of work and schedule for any deliverables;
(b) A maximum, not-to-exceed price or fixed price amount for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services specified and authorized under the work order or task order, and
(c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order.

Stats. Implemented: ORS 279A.065, 279C.110, 279C.120 & OL 2011, ch 458
Hist.: DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

POST-SELECTION CONSIDERATIONS

137-049-0300
Prohibited Payment Methodology; Purchase Restrictions
(1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:
(a) Consultant's costs under the Contract plus a percentage of those costs; or
(b) A percentage of the Project construction costs or total Project costs.
(2) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract in which:
(a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personal work on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
(b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.
(3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:
(a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see Rules 137-049-0870 and 137-049-0880); or
(b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279A.065, OL 2011, ch 458

137-048-0310
Expired or Terminated Contracts; Reinstatement
(1) If Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:
(a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended, or
(b) Terminated Contracts. If Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining
Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.

(2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:
(a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;
(b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and
(c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stats. Implemented: ORS 279A.085 & 279C.110, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 6-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-08, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

137-048-0320
Contract Amendments

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement Document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 278A.065, OL 2011, ch 458
Stats. Implemented: ORS 278A.065, 279C.110, OL 2011, ch 458
thirty Days after the Contractor submitted a claim for payment to the Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570

137-049-0850
Final Inspection
(1) Notification of Completion; Inspection. The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.
(2) Acknowledgment of acceptance. When the Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.570(8)

137-049-0860
Public Works Contracts
(1) Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.600(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR chapter 839.
(2) Required Contract Conditions. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:
(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).
(b) Minimum hours of labor and overtime, as set forth in ORS 279C.520(1).
(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).
(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.630.
(e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage are applicable, the contract and every subcontractor must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.
(f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).
(3) Requirements for Specifications. The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:
(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a).
(A) Physically contained within or attached to hard copies of procurement Specifications;
(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020, or, (iii) when the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.
(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0335.
(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.800 - 279C.870, OL 2011, ch 458

81
137-049-0870
Specifications; Brand Name Products

(1) Generally. The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) Equivalents. A Contracting Agency may identify products by brand names so long as the following language: "approved equal," or "equal," "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.085
Stats. Implemented: ORS 279C.345

137-049-0880
Records Maintenance; Right to Audit Records

(1) Records Maintenance; Access. Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance, and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Contracting Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) Inspection and Audit. A Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) Records Inspection; Contract Audit. The Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.085
Stats. Implemented: ORS 279A.030, ORS 279C.375, ORS 279C.380 & ORS 279C.440

137-049-0890
Contracting Agency Payment for Unpaid Labor or Supplies

(1) Contract Incomplete. If the Contract is still in force, the Contracting Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If a Contracting Agency chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved of liability for unpaid claims.

(2) Contract completed. If the Contract has been completed and all funds disbursed to the Prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The Contracting Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.085
Stats. Implemented: ORS 279C.515

137-049-0900
Contract Suspension; Termination Procedures

(1) Suspension of Work. In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) Termination of Contract by mutual agreement for reasons other than default.
(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) Public Interest termination by Contracting Agency. A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) Responsibility for completed Work. Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) Remedies cumulative. The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

(6) Application of this rule does not apply to suspension of the work or termination of the Contract as a result of Contractor's violation of any provision of law or Contract term.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.650, ORS 279C.326, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

137-049-0910
Changes to the Work and Contract Amendments

(1) Definitions for Rule. As used in this rule:

(a) "Amendment" means a written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its contract provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

(2) Changes Provisions. Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) Change Order Authority. Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) Contract Amendments. Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work reasonably related to the work described in the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) in the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with applicable legal requirements.
Stat. Auth.: ORS 279A.085
Stat. implemented: ORS 279A.085 & ORS 279C.400(1)