

Independent Audit Guidelines

Introduction

The Department of Administrative Services (DAS) requires certain Qualified Rehabilitation Facilities (QRF's) to conduct an annual independent audit of their "direct labor", as defined under ORS 279.835(5). This "direct labor audit" (the "Audit") is designed to assist DAS in ensuring ongoing QRF compliance with applicable law and eligibility for participation in the QRF program. The "Audit" should be conducted in conjunction with the annual financial audit performed for the QRF. The Audit should be performed in accordance with the following; Standards established by the American Institute of Certified Public Accountants, Oregon Revised Statute (ORS) 279.835 to 279.855, Oregon Administrative Rule (OAR) 125-055-0035, DAS policy, and these guidelines.

Background

The Oregon Legislative Assembly passed the "Products of Disabled Individuals" law in 1977. This law is intended to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. [ORS 279.840]

By statutory authority, DAS is appointed to carry out duties that facilitate the state's policy regarding the Products of Disabled Individuals law. Oregon Revised Statute (ORS) 279.015 and 279.835 to 279.855 establish the criteria governed by this law. (See attached excerpts; ORS 279.015, and 279.835 to 279.855). To carry out these duties, DAS has implemented Oregon Administrative Rule (OAR) 125-055-0005 through 125-055-0045 (See attached). In accordance with the requirements established in OAR 125-055-0035, QRFs which have been awarded agency contracts whose total annual value exceeds \$20,000.00 shall have an Audit of direct labor to determine compliance with ORS 279.835(4)(c). This statute defines a "Qualified nonprofit agency for disabled individuals" as a nonprofit activity center or rehabilitation facility: Which in the manufacture of products and in the provision of services, whether or not the products or services are procured under ORS 279.015 and 279.835 to 279.855, during the fiscal year employs disabled individuals for not less than 75 percent of the man-hours of direct labor required for the manufacture or provision of the products or services. The 75 percent direct labor by disabled individuals' requirement applies broadly to the total direct labor performed for the QRF as a whole in the manufacture or provision of goods and services, whether or not the QRF goods or services are actually procured from the QRF under the QRF program. The provision specifies that this level of disabled employment be maintained during the fiscal year and that this requirement applies only to direct labor.

Purpose

These suggested guidelines are designed to provide guidance to Certified Public Accountants (CPAs) employed by a QRF who is required to conduct an Audit for the most recent complete fiscal year of the QRF. These suggested guidelines are not mandatory, and are provided only to aid the CPA in complying with the requirements and designed to satisfy the requirements of OAR 125-055-0035. The audit shall be in the form of an Examination of the QRF, and shall include an Examination Report, and a Report of Examination Findings, if any.

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Documentation

In order for a CPA to conduct an Examination, the QRF will need to provide the CPA the following records.

- 1) A listing of all products and services provided by the entity in the QRF's fiscal year, including those products and services which were procured by Agencies under ORS 279.015 and 279.835 to 279.850 and those which were procured outside the program created by those statutes;
- 2) A list of all individuals covered by the audit scope employed by the QRF who are Disabled Individuals who provided direct labor required for the production of products or the performance of services during the fiscal year that the subject of the audit examination, including employee name, unique employee identification number, job description and disability status;
- 3) A list of all individuals covered by the audit scope employed by the QRF, whether paid or unpaid, who are not Disabled Individuals and who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number and job description;
- 4) A compilation of the total hours of direct labor actually performed by the QRF during the fiscal year;
- 5) Payroll reports for all individuals covered by the audit scope employed by the QRF during the fiscal year, including employee name, social security number. Work hours paid, and vacation hours, sick leave hours, and training hours. Hours worked must be segregated from hours paid but not worked;
- 6) Time and billing records showing direct hours worked by each employee in the manufacture or provision of goods and services.
- 7) Disability status documentation. The QRF must have documentation on file for each employee who is or who is claimed to be a Disabled Individual. The file must include documentation from an officially accredited source that each such person has been determined to be a Disabled Individual as defined in OAR 125-055-0005. The acceptable forms of disability documentation are:
 - a) Department of Human Services/Seniors and People with Disabilities, Office of Licensing and Quality Care referrals;
 - b) Commission for the Blind Referrals;
 - c) Department of Human Services/Community Human Services, Office of Vocational Rehabilitation Services referrals;
 - d) Competitive Employment Statement, signed by a physician or other qualified professional as defined in (OAR) 125-055-0005.
 - e) Certification that the employee is legally deaf and is a Disabled Individual as defined in OAR 125-055-0005;
 - f) Certification that the employee is eligible for Supplemental Security Income (SSI) or Social Security for the Disabled (SSDI) benefits,

Examination: In accordance with principles generally accepted in the industry, the Certified Public Accountant (CPA) should:

- 1) Determine whether the QRFs time and billing and payroll records are sufficiently complete and reliable for demonstrating compliance with the 75 percent direct labor requirement. The records should clearly distinguish direct labor hours from other hours worked and paid, and allow for ready assessment of direct hours worked by employees with disabilities, as well as employees without disabilities.

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2) If the records are found to be sufficiently complete and reliable, the CPA shall test the QRF's calculation for the entire applicable fiscal year, the portion of total direct labor hours that were worked by employees with disabilities. Only direct hours worked shall be included in the calculation. Vacation, sick leave, holiday, training hours, and any other hours paid but not worked by the employee are to be excluded from the calculation.

3) The CPA shall employ sufficient statistical sampling techniques to obtain an eighty percent level of confidence with a precision of +/- ten percent that the direct labor a) meets the definition of direct labor under ORS 279.835 to 279.855, and b) that the hours reported as worked by persons with disabilities were worked by persons whose disabilities were properly documented in accordance with *item #4 - Documentation* above.

4) Review and determine whether adequate actions have been taken to resolve any prior Examination findings and recommendations.

CPA Reporting: CPA shall prepare and provide a signed report to the QRF management certifying, at a minimum, the CPA's findings and conclusions on the following;

1) Whether the time, billing, and payroll records were sufficiently complete and reliable for the CPA to determine compliance with the 75 percent disabled direct labor requirement. If the records are not sufficiently complete and reliable, the CPA should list the deficiencies and make recommendations. (See following page).

2) A breakdown of the portion of direct labor hours, for the overall fiscal year, that were worked by persons with disabilities, as examined by the CPA

3) A breakdown of the portion of the total number of sampled employees with disabilities who performed direct labor during the fiscal year and for whom acceptable forms of documentation of disability were retained.

4) The steps being taken to resolve any prior Examination findings and recommendations.

A sample Examination and Findings Report are attached.

QRF Reporting: The QRF is required to submit Examination results to DAS (including, at a minimum, a copy of the CPA's signed report) within 120 calendar days after the close of the QRF's fiscal year.

1) All records identifying QRF employees are to be treated as confidential records and protected from unauthorized review by the CPA.

2) DAS reserves the right to verify any and all information contained in applicable QRF files.

3) Records will be treated as confidential.

Supervisory Time Capture:

Background: In the final report of the Secretary of State's Audit (State or Oregon, Department of Administrative Services, Review of Qualified Rehabilitation Facilities, September 27, 2000. No. 2000-30), the auditors address the matter of allocation of supervisor's time as follows.

Some QRF supervisors and job coaches spend a portion of their time performing direct labor. The QRFs have developed their own policies and methods for capturing this time. Portland Habilitation Center allocates 50 percent of supervisors' and job coaches' time to direct labor. Goodwill Industries and St. Vincent dePaul Rehabilitation have determined that none of their supervisors' and job coaches' time is

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spent in direct labor. Garten Services reports having performed time and motion studies on its various supervisory positions, and allocates time based on the results. To encourage full and consistent reporting of direct labor hours, DAS should consider working with QRF representatives to identify reliable methods for capturing and reporting time worked by supervisors and job coaches with mixed responsibilities.

This information was further verified by the Oregon Rehabilitation Association, Inc. by a survey of nine of their QRF members regarding allocation of supervisor's time. The survey supports the findings of the Audit. Therefore, the following guidelines have been established to facilitate the accurate capturing of supervisory direct labor hours.

DAS recognizes that there are numerous techniques available for capturing supervisory direct labor. For the purposes of the QRF Program, the techniques will be limited to three; 1) direct labor hour reporting (daily as it occurs), 2) application of a set percentage (after conducting appropriate hour sampling), and 3) following the federal NISH program guidelines, which direct the QRF to capture 50% of a lead worker's time as supervisory and the remaining 50% as direct labor.

1) Direct Labor Hour Reporting: QRFs choosing to utilize this technique shall capture each individual supervisor or job coach's time on a daily basis and allocate those hours as either direct or non-direct labor hours.

2) Application of set percentage: QRFs choosing to utilize this technique shall conduct appropriate hour sampling of all of their supervisors and job coaches to determine the appropriate percentage to be applied to all supervisors' hours. The samples and the summary report shall be re-evaluated every two years, or when products or services change and the structure of the organization are affected; whichever is sooner. A copy of the sampling and the summary report shall be available for the Independent Auditor to review while conducting the annual audit.

3) Federal program guidelines: QRFs choosing to utilize this technique shall maintain a copy of the federal guidelines directing the 50% split of supervisor's time between direct labor and non-direct labor for the Independent Auditor to review while conducting the annual audit.

Excerpts from Oregon Revised Statutes

PRODUCTS OF DISABLED INDIVIDUALS

279.835 Definitions for ORS 279.835 to 279.855. As used in ORS 279.835 to 279.855:

- (1) "Department" means the Oregon Department of Administrative Services.
- (2) "Disabled individual" means an individual who, because of the nature of disabilities, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.
- (3) "Public agency" or "public contracting agency" has the same meaning contained in ORS 279.011.
- (4) "Qualified nonprofit agency for disabled individual" means a nonprofit activity center or rehabilitation facility:
 - (a) Organized under the laws of the United States or of this state and operated in the interest of disabled individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;
 - (b) Which complies with any applicable occupational health and safety standard required by the laws of the United States or of this state; and
 - (c) Which in the manufacture of products and in the provision of services, whether or not the products or services are procured under ORS 279.015 and 279.835 to 279.855, during the fiscal year employs disabled individuals for not less than 75 percent of the man-hours of direct labor required for the manufacture or provision of the products or services.

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(5) "Direct labor" includes all work required for preparation, processing, and packing, but not supervision, administration, inspection and shipping. [1977 c.304 s.3; 1983 c.690 s.17; 1989 c.224 s.42; 1991 c.93 s.1; 1993 c.500 s.34]

279.840 Policy. The purpose of ORS 279.015 and 279.835 to 279.855 is to further the policy of this state to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self-support and minimizing their dependence on welfare and need for costly institutionalization. [1977 c.304 s.2; 1989 c.224 s.43]

279.845 Department to determine and revise prices for products and services of nonprofit agency for disabled individuals; department to publish sources of products and services. (1) It shall be the duty of the Oregon Department of Administrative Services to:

- (a) Determine the price of all products manufactured and services offered for sale to the various public agencies by any qualified nonprofit agency for disabled individuals. The price shall recover for the workshops the cost of raw materials, labor, overhead, delivery costs and a margin held in reserve for inventory and equipment replacement;
- (b) To revise such prices from time to time in accordance with changing cost factors; and
- (c) To make such rules regarding specifications, time of delivery and other relevant matters of procedure as shall be necessary to carry out the purposes of ORS 279.015 and 279.835 to 279.855.

(2) The department shall establish and publish a list of sources or potential sources of products produced by any qualified nonprofit agency for disabled individuals and the services provided by any such agency, which the department determines are suitable for procurement by public agencies pursuant to ORS 279.015 and 279.835 to 279.855. This procurement list and revisions thereof shall be distributed to all public purchasing officers. [1977 c.304 s.4; 1989 c.224 s.44]

279.850 Procurement of product or service; department authorized to make agreements for procurement. (1) If any public agency intends to procure any product or service on the procurement list, that agency shall, in accordance with rules of the Oregon Department of Administrative Services, procure such product or service, at the price established by the department, from a qualified nonprofit agency for disabled individuals provided the product or service is of the appropriate specifications and is available within the period required by that public agency.

(2) In furthering the purposes of ORS 279.015 and 279.835 to 279.855, it is the intent of the Legislative Assembly that there be close cooperation between the department, public contracting agencies and qualified nonprofit agencies for disabled individuals. The department on behalf of public contracting agencies and qualified nonprofit agencies for disabled individuals is authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of ORS 279.015 and 279.835 to 279.855 and any other law requiring procurement of products or services. [1977 c.304 s.5; 1989 c.224 s.45]

279.855 Qualified agencies may obtain goods and services through department. The following may purchase equipment, materials, supplies and services through the Oregon Department of Administrative Services in the same manner as state agencies as provided in ORS 279.545 to 279.746 and 279.800 to 279.833:

- (1) Qualified nonprofit agencies for disabled individuals participating in the program set forth in ORS 279.015 and 279.835 to 279.850.
- (2) Residential programs when under contract with the Department of Human Services or any division thereof to provide services to youth in the custody of the state.
- (3) Public benefit corporations, as defined in ORS 65.001, that provide public services either under contract with a state agency, as defined in ORS 171.133, or under contract with a unit of local government, as defined in ORS 190.003, that funds the contract, in whole or in part, with state funds. [1977 c.304 s.7; 1989 c.224 s.46; 1991 c.419 s.1]

Excerpts from Oregon Administrative Rule

OAR 125-055-0005

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

(1) As used in OAR 125-055-0005 to 125-055-0045:

- (a) "Accredited Vocational Consultant" means an individual who is accredited as:
 - (A) A Certified Rehabilitation Counselor (CRC) by the Certification of Disability Management Specialists Commission;
 - (B) A Certified Insurance Rehabilitation Specialist (CIRS) by the Certified Insurance Rehabilitation Specialist Commission; or
 - (C) A Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.
- (b) "Agency" means a public agency, as defined in ORS 279.011(7).

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(c) "Competitive Employment" means work performed by an individual in the competitive labor market on a full-time basis with no more than reasonable accommodation (as required by the Americans with Disabilities Act, 42 USC §§12101 to 12213) for which the individual is compensated within the range of customary wages and levels of benefits paid in the community for the same or similar work performed by individuals who are not disabled.

(d) "Disabled Individual," as defined in ORS 279.835(3), means a person who has a physical or mental impairment (a residual, limiting condition resulting from an injury, disease or congenital defect) that so limits the person's functional capabilities (such as mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is not able to engage in normal competitive employment over an extended period of time and, as a result, must rely on the provision of specialized employment opportunities by qualified nonprofit agencies for disabled individuals.

(e) "Price" means the cost to Agencies of the products and services under contracts procured under the Products of Disabled Individuals Law, as determined under OAR 125-055-0030.

(f) "Procurement List" means a listing of those nonprofit agencies for Disabled Individuals that currently are qualified, under OAR 125-055-0015, to participate in the program created by ORS 279.835 to 279.850 and includes, as required by ORS 279.850(1), a list of the products and services offered by QRFs and determined by the State Procurement Office, under OAR 125-055-0020, to be suitable for purchase by Agencies.

(g) "QRF" means an activity center or rehabilitation facility, certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services, that the State Procurement Office has determined to be qualified under OAR 125-055-015.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835 to ORS 279.855

125-055-0010

Policy

(1) As required by ORS 279.850(1), Agencies that intend to procure a product or service that is listed on the Procurement List must procure that product or service, at the Price determined by the State Procurement Office, from a Qualified Rehabilitation Facility if the product or service is of specifications appropriate to the Agency's procurement needs and is available within the time required by the Agency.

(2) It is the policy of the Department to assist Qualified Rehabilitation Facilities (hereinafter referred to as QRFs) by administering a program to:

(a) Identify contracting opportunities in the public sector for QRFs;

(b) Ensure that QRF programs meet the standards set forth in ORS 279.835 to 279.850; and

(c) Assist and facilitate Agencies in entering into contractual relationships with QRFs for the provision of products and services.

(3) In administering the program created by ORS 279.835 to 279.850, the State Procurement Office, Agencies and QRFs shall keep in mind the purpose of the law: to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services.

(4) In promoting the policy of this section and ORS 279.850(2), the Chief Procurement Officer may appoint uncompensated volunteer members to serve on an advisory council for purchases from qualified rehabilitation facilities to review available information on QRF programs and to make recommendations to the Chief Procurement Officer concerning the facilitation and administration of the program under ORS 279.835 to 279.850. The Chief Procurement Officer's authority to appoint advisory council members includes the authority to remove and replace members in the Chief Procurement Officer's sole discretion. Meetings of the advisory council for purchases from qualified rehabilitation facilities are not subject to the public meetings law (ORS 192.610 to 192.710). However, to facilitate attendance by members of the public, the State Procurement Office will post, at least two business days prior to each meeting, notice of the times and places of meetings of the advisory council on a web-site maintained by the State Procurement Office. However, the State Procurement Office reserves the right to change the meeting time and place after the posting of notice of a meeting to address scheduling needs or for the convenience of participants.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835 to ORS 279.855

125-055-0015

Application for QRF Participation

(1) Initial Application. A nonprofit activity center or rehabilitation facility that seeks to participate in the program created by ORS 279.835 to 279.850 must submit a completed application to the State Procurement Office on forms prescribed by the State Procurement Office.

(2) Subsequent Annual Reapplications.

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- (a) A QRF that seeks to continue participation in the program after having initially been approved as qualified and placed on the Procurement List under this rule must submit a completed reapplication to the State Procurement Office each year on forms prescribed by the State Procurement Office. The QRF must submit the reapplication within 120 calendar days of the close of the QRF's fiscal year.
- (b) All QRFs who have had, in the previous fiscal year of the QRF, contracts with Agencies that yielded payments to the QRF that in the aggregate exceeded \$20,000 (Twenty Thousand Dollars) in that fiscal year, must also submit the audit report required by OAR 125-055-0035 for that fiscal year with their annual reapplications. A QRF who must file an annual reapplication must submit the reapplication, together with the audit report, within 120 days of the close of the QRF's fiscal year.
- (3) The information to be submitted on or as part of the application or annual reapplication must contain all information required by the application or reapplication form, including:
- (a) Corporate or organizational information, including legal name, business or mailing address and other information to permit communication with the organization, name of the executive director or other chief managing officer, federal tax identification number and documentation of the organization's status as a nonprofit entity.
- (b) Information concerning the organization's status as an activity center or rehabilitation facility that is certified as a community rehabilitation program or as a vocational service provider through the Oregon Department of Human Services.
- (c) Information concerning the organization's certification status under the federal Javits-Wagner-O'Day Act program operated under 41 USC §§46 to 48c.
- (d) For initial applications, information concerning the organization's employment of Disabled Individuals during the organization's last fiscal year, if the organization has operated as a QRF throughout the last fiscal year, including information sufficient to determine whether the organization qualifies or will qualify as a nonprofit agency for Disabled Individuals under the direct labor requirement of ORS 279.835(5). If the applicant has not operated as a QRF throughout its last fiscal year, then the applicant must submit information concerning its planned employment of Disabled Individuals in the next fiscal year of the applicant, including the measures it will take to ensure that the applicant will comply with the direct labor requirement of ORS 279.835(5) in the next fiscal year of the applicant.
- (A) To qualify under this subparagraph, an applicant is required, during the applicant's fiscal year, to employ Disabled Individuals for not less than 75 percent of the total work hours of direct labor required for the manufacture or provision of the products or services produced by the applicant. The 75 percent direct labor requirement need not be met with respect to each product or service provided by the applicant, or with respect to each contract the applicant enters into under this program.
- (e) If the applicant has contracts with Agencies that yield payments to the applicant that in the aggregate exceed \$20,000 (Twenty Thousand Dollars) in the applicant's fiscal year, information concerning whether the applicant has had an independent audit of the applicant's direct labor and, if so, the date of the most recently conducted audit and a true and correct copy of the audit report. An applicant who must submit an annual reapplication must submit a true and correct copy of the audit report for the preceding fiscal if the applicant's contracts exceeded the \$20,000 threshold in that fiscal year.
- (f) A listing of all contracts that exceed \$500 (Five Hundred Dollars) the applicant has with Agencies that includes the identity of each contracting Agency, the type of product or service provided under each contract, the annual contract amount for each contract year and the estimated contract amount for the current contract year.
- (g) Certifications by an authorized officer of the applicant that:
- (A) The applicant qualifies as a "nonprofit agency for disabled individual" as defined in ORS 279.835;
- (B) All individuals claimed to be employed as Disabled Individuals by the applicant have been determined to be Disabled Individuals as documented by information maintained by the applicant in its file on each such individual.
- (C) The applicant complies with all applicable occupational health and safety standards required by the laws of the United States or of the State of Oregon.
- (D) The applicant will conduct an annual direct labor audit by an independent certified public accountant to determine the applicant's compliance with ORS 279.835(5)(c), if the payments to the applicant under Agency contracts in the aggregate exceed \$20,000 (Twenty Thousand Dollars) annually;
- (E) The applicant will comply, if any of its products or services are placed on the Procurement List, with the applicable requirements of ORS 279.835 to 279.850 and OAR 125-055-0005 to OAR 125-055-0040; and
- (F) The applicant has submitted no false or misleading information in connection with the application and will submit no false or misleading information in connection with the submission of information concerning the applicant's continuing qualifications to maintain the listing of its products or services on the Procurement List.
- (4) The State Procurement Office will evaluate each application submitted by an entity seeking a determination of its QRF status and addition to the Procurement List. The State Procurement Office reserves the right to require applicants to provide information in addition to the information required by this rule that is pertinent to making the determination whether an applicant is qualified.
- (5) In conducting the evaluation, the State Procurement Office will consider the particular facts and circumstances in each case to determine whether the applicant is qualified for QRF status and addition to the Procurement List under the following standards:
- (a) The applicant must be organized under the laws of the United States or of the State of Oregon and must be operated in the interest of Disabled Individuals;

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- (b) The net income of the applicant must not inure, in whole or in part, to the benefit of any shareholder or other individual;
- (c) The applicant must comply with all applicable occupational health and safety standards required by the laws of the United States or of the State of Oregon; and
- (d) The applicant must satisfy the direct labor requirement of ORS 279.835(5) or, in the case of a start-up applicant, demonstrate that it will satisfy the direct labor requirement of ORS 279.835(5) in the ensuing fiscal year of the applicant.
- (6) If the State Procurement Office determines that the entity is qualified, it shall send notice of QRF status to the applicant and add the applicant to the Procurement List. If the State Procurement Office does not find the applicant qualified for QRF status, it shall reject the application and notify the applicant in writing of the criteria the applicant did not satisfy or adequately demonstrate.
- (7)(a) Within thirty (30) calendar days from the date of the State Procurement Office's notice of the rejection of an application or reapplication, the applicant may appeal the decision by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice and shall state the applicant's grounds for appealing the decision. If the applicant does not appeal the State Procurement Office's decision within the 30-day period from the date of the State Procurement Office's notice of the rejection of the application or reapplication, the applicant shall not be placed on the Procurement List or, in the case of a reapplication, on the 31st day, the applicant shall be removed from the Procurement List.
- (b) On appeal, if the State Procurement Office determines that the applicant is then qualified, it shall send the applicant notice of qualification for QRF status and add the applicant to the Procurement List. If the State Procurement Office does not find the applicant qualified, it shall provide the applicant a written decision that states the reasons for that determination and that denies the applicant placement on the Procurement List or, in the case of a reapplication, removes the applicant from the Procurement List. The State Procurement Office's written decision under this subsection constitutes a final order under ORS 183.484.
- (8) The State Procurement Office may re-evaluate the decision to grant approval for QRF status if the State Procurement Office discovers pertinent information that was not available when the initial decision was made. If the State Procurement Office determines that there is sufficient cause to revoke QRF status, it shall issue notice to cure to the QRF. If the QRF does not satisfactorily effect cure within 30 calendar days of the date of the State Procurement Office's notice or such longer time as may be permitted by the State Procurement Office, the State Procurement Office may then initiate proceedings to revoke QRF status by providing written notice of the proposed revocation and removal of the entity from the Procurement List. An entity may appeal the notice to cure or the proposed revocation and removal by submitting a written appeal to the State Procurement Office in the manner provided in subsection (7) of this rule.
- (9) If a QRF is removed from the Procurement List under subsections (5) to (8) of this section, no Agency shall award or renew a contract made with that QRF under ORS 279.835 to 279.850, and the removal from the Procurement List shall constitute sufficient grounds for an Agency to terminate any outstanding contract with the QRF that was established under ORS 279.835 to 279.850. The State Procurement Office will post, on a web-site or other accessible on-line posting address administered through the State Procurement Office, notice of the removal of a QRF from the Procurement List.
- (10) Nothing in this rule shall be construed as prohibiting the State Procurement Office and an applicant or QRF from resorting to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (7) and (8) of this rule.
- (11) The State Procurement Office will publish and maintain a Procurement List that identifies the nonprofit activity centers and rehabilitation facilities the State Procurement Office determines, under this section, to be qualified to participate in the program. The State Procurement Office shall distribute this Procurement List or make it available, electronically or otherwise, to all Agencies.
- (12) After a denial or revocation of an applicant's or QRF's qualified status and listing on the Procurement List, the applicant or QRF may re-apply only after one year from the date the denial or revocation determination became final.
- (13) Once listed on the Procurement List, a QRF will remain listed, subject to the State Procurement Office's re-examination of the QRF's qualified status each year, based on the information provided with the QRF's annual reapplication. Additionally, the State Procurement Office may terminate the listing under the procedures provided by this rule as the result of the State Procurement Office's discovery of pertinent information that was not available when the initial, or any subsequent reapplication decision was made, or if the QRF ceases to do business as a QRF.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835 to ORS 279.855

125-055-0020

Determination of Suitability of Product or Service

- (1) The State Procurement Office will publish and maintain a Procurement List that identifies the products and services of QRFs the State Procurement Office has determined to be suitable for procurement by Agencies under this section. No Agency shall enter into or renew a contract under the QRF program created by ORS 279.835 to 279.850 for products or services that are not on the Procurement List. No QRF shall offer to contract to provide, or renew any contract to provide, under the program created by ORS 279.835 to 279.850, products and services that are not on the Procurement List.

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- (2) A QRF proposing to offer one or more products or services under ORS 279.835 to 279.850 shall deliver a written request to the State Procurement Office that specifies the products or services proposed to be offered.
- (3) For a product or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:
- (a) Qualified Rehabilitation Facility (QRF). A QRF proposing to furnish a product or service must be a qualified nonprofit agency for disabled individuals approved under OAR 125-055-0015.
- (b) Ownership. A QRF must own the product or directly provide the service that the QRF proposes to provide to Agencies through the program created by ORS 279.835 to 279.850. For example, a product or service will not be determined to be suitable for procurement by Agencies where the QRF operates merely as a broker, distributor, licensor or sales agent for another person or entity in providing a product to an Agency.
- (c) Tied Products. A QRF's contract to provide a service cannot obligate an Agency to buy a product tied to that service unless the product is incidental to, or consumed in, the performance of the service.
- (d) No Excessive Prices. The pricing proposed to be charged by the QRF for the product or service must not be excessive. In cases in which proposed pricing appears arguably excessive, as determined in the discretion of the State Procurement Office, the State Procurement Office may require the QRF to demonstrate that the proposed pricing is not excessive. The QRF's demonstration may include reliable evidence of comparative pricing in the market for the same or similar products or services.
- (e) Purpose, Value, Capability. The QRF desiring to furnish the product or service must demonstrate to the State Procurement Office that the QRF meets the purpose of the Products of Disabled Individuals Law and State Procurement Office quality standards and delivery schedules. The QRF must demonstrate capability by submitting to the State Procurement Office a written plan that addresses:
- (A) Purpose of the Law. The purpose of the law is to further the policy of this state to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing their dignity and capacity for self support and minimizing their dependence on welfare and need for costly institutionalization. To ensure that a QRF achieves this goal, the QRF must demonstrate:
- (i) The extent of the labor operations to be performed in connection with the QRF's provision of the product or service; and
- (ii) That appreciable value will be added to the product or service by Disabled Individuals; the term "appreciable value" means a measurable addition of value, or an objectively observable improvement, enhancement or change, to the final product or service. No product or service may be determined to be suitable for addition to the Procurement List where the process of the manufacture, assembly or production of the product or of the rendition of the service contains or is affected by any procedure, device or artifice under which the work of Disabled Individuals does not contribute, in a substantial, economically meaningful manner, to the value of the product or to the performance of the service, or under which the work of Disabled Individuals is not a logical element of the chain of production.
- (iii) The range of salaries, rates of pay or other applicable measure of compensation that the QRF will pay for work performed in providing the product or services proposed.
- (B) Subcontractor Disclosure. The QRF must disclose subcontractor utilization, partnerships or planned joint ventures, if any, the character and portion of the labor to be performed by, and the equipment to be used or supplied by, any subcontractor, partner or joint venturer (collectively, "subcontractor"). If a subcontractor performs direct labor or provides personnel that perform direct labor in the manufacture or assembly of a product or in the provision of a service to be provided to an Agency under the program created by ORS 279.835 to 279.850, the QRF must submit reliable documentation that demonstrates that:
- (i) The combined productive activities of that subcontractor and the QRF in the performance of the subcontract between them together meet the standards of OAR 125-055-0015(3)(d) and OAR 125-055-0020(3)(e)(A)(ii); and
- (ii) The performance of work by non-QRF participants and persons who are not Disabled Individuals will not cause the QRF that participates in such a combination to violate the direct labor requirement of OAR 125-055-0015(3)(d) or result in a violation of OAR 125-055-0020(3)(e)(A)(ii). For purposes of this subparagraph, a person or entity that merely serves as a supplier of raw materials, parts or components of a product, or of supplies that are used or consumed in the performance of a service, is not a subcontractor. A person or entity that only leases facilities or productive equipment to a QRF, and provides no labor or personnel that participate in the manufacture or assembly of a product or in the provision of a service, is not a subcontractor.
- (C) Quality Standards and Delivery Schedules. The QRF must demonstrate that the QRF has the capability to meet the applicable specifications and to make the product or services available within the time required for supplying Agencies.
- (D) Additional Information. The State Procurement Office may require other pertinent data in the QRF plan such as the projected employment potential, start up costs and estimated cost recovery, product/service pricing, market research conducted by the QRF for the product or service, if any, identification of business space dedicated to the product or service, and other pertinent information that may be requested by the State Procurement Office. In conducting determinations of suitability, the State Procurement Office may conduct on-site investigations of the QRF's work-sites and production processes.
- (4) Based on the request, including the written plan required by subparagraph (3)(e) of this rule, and any additional information submitted in response to the State Procurement Office's request under subparagraph (3)(d)(D), the State Procurement Office will determine whether the proposed product or service satisfies the criteria in subsection (3). If the State Procurement Office determines

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that the product or service satisfies the criteria in subsection (3), it shall record that determination on a form prescribed by the State Procurement Office. If the State Procurement Office determines that the product or service does not satisfy the criteria in subsection (3), it shall notify the requesting party in writing of the criteria the QRF did not meet or adequately demonstrate that it met.

(5) Within ten (10) calendar days from the date of the State Procurement Office's notice of the criteria that a requested product or service failed to meet or that the QRF failed to satisfactorily demonstrate that it met, the QRF may appeal the decision by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice and shall state the QRF's grounds for appealing the decision. On appeal, if the State Procurement Office determines that the product or service satisfies the criteria, it shall send notice to the QRF of its decision and add the product or service to the Procurement List. If the State Procurement Office does not find that the product or service satisfies the criteria, it shall provide the QRF a written decision that states the reasons for that determination. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(6) At least fourteen (14) calendar days prior to the effective date of the listing of a product or service on the Procurement List, the State Procurement Office shall give notice of the proposed listing on an accessible on-line posting address administered through the State Procurement Office. A person or entity who will be adversely affected by the listing in its ability to compete for public contracts for the product or service proposed to be listed may, within the fourteen-day period, submit a written protest of the listing of the product or service to the State Procurement Office. The written protest must state the facts that demonstrate how the listing will adversely affect the person's or entity's ability to compete for public contracts for the product or service proposed to be listed and must demonstrate how the product or service to be listed fails to satisfy the criteria stated in subsection (3) of this rule. If the State Procurement Office receives no protest concerning the proposed listing by the close of business on the fourteenth day after the first day on which the State Procurement Office first posted the form, then the listing shall automatically become effective on the next business day after the fourteenth day.

(7) If the State Procurement Office receives a written protest concerning the proposed listing of a product or service from a person or entity who has demonstrated in writing that it will be adversely affected by the listing in its ability to compete for public contracts for the product or service proposed to be listed, the State Procurement Office will consider the protest and issue a written response to the protest. The State Procurement Office will not consider a protest not made in writing and received by the State Procurement Office by the close of business on the fourteenth day after the first day on which the State Procurement Office first posted the proposed listing under subsection (6) of this rule. In considering a timely protest, the State Procurement Office may request further information and comment from the complaining party and from the QRF that submitted the application for the listing of the product or service.

(a) The State Procurement Office's response to the protest will confirm the listing of the product or service, modify the listing of the product or service, or withdraw the proposed listing of the product or service. The State Procurement Office will make its written determination available, by mail or by electronic means, to the complaining party and to the QRF whose product or service is the subject of the protest.

(b) A protester or QRF who is adversely affected or aggrieved by the State Procurement Office's response under this subsection may request that the State Procurement Office institute contested case proceedings under ORS 183.413 to 183.470 by delivering to the State Procurement Office a written request for a contested case within fourteen (14) calendar days of the date of issuance of the response. The written request for a contested case must describe how the requesting party is adversely affected or aggrieved by the response and why the Division's response is incorrect. The contested case will be limited to the issues raised before the State Procurement Office in the protest proceedings.

(8) Nothing in this rule shall be construed as prohibiting the State Procurement Office, a QRF and a protester from agreeing to resort to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (5) and (7) of this section.

(9) No determination under this section that a product or service is suitable and no placement of a product or service on the Procurement List shall act to displace a contractor under an existing public contract with an Agency for the same product or service prior to the expiration or other termination of the contractor's contract with the Agency.

(10) Once a product or service has been placed on the Procurement List, it will remain on the list until:

(a) Five years have elapsed from the date of the listing of the suitability determination, or such earlier time as the State Procurement Office may prescribe for expiration of the listing at the time it makes the determination of suitability;

(b) The State Procurement Office has determined, under OAR 125-055-0020 or OAR 125-055-0025, that the product or service is not suitable for procurement by Agencies;

(c) The product or service no longer is offered by the QRF that requested a determination of its suitability; or

(d) The QRF is removed from the Procurement List.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835 to ORS 279.855

125-055-0025

Review of Suitability Determinations

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(1) The State Procurement Office reserves the right, to be exercised in its sole discretion, to review suitability determinations as changes in pertinent circumstances, which include but are not limited to changes in rules, laws, market conditions and QRF contractor performance, occur. Should the State Procurement Office identify information that was not available during the initial determination that negatively impacts a previous determination of suitability, it may notify the QRF and conduct a review of the determination. The review may result in removal of the product or service from the Procurement List. A QRF may appeal a decision to remove a product or service from the Procurement List in the manner provided in OAR 125-055-0020(5).

(2) The State Procurement Office may review a determination that a product or service is suitable if the State Procurement Office discovers pertinent information that was not available when the initial decision was made. Within 10 calendar days after the receipt of written notice from the State Procurement Office of a determination to remove a product or service from the listing, the affected QRF may appeal the determination by submitting a written appeal to the State Procurement Office. The appeal shall include a copy of the State Procurement Office's notice, and the QRF's grounds for appealing the determination. If the State Procurement Office determines, on reconsideration, that the product or service is suitable for procurement by public agencies, the State Procurement Office shall send notice of approval to the QRF and maintain the publication of the product or service on the Procurement List. If the State Procurement Office finds the product or service not suitable for procurement by public agencies under the criteria of OAR 125-055-0020(3), the State Procurement Office shall give written notice to the QRF of the criteria that were not satisfied. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(3) In no event may an Agency and a QRF agree to change the specifications in, or amend, a contract established under the program created by ORS 279.835 to 279.850 in a manner that alters the character or scope of the product or service so that the product or service no longer is essentially the same product or service that was the subject of the determination of suitability. In cases where such a change is sought, the Agency and the QRF must first request and receive from the State Procurement Office a new or revised determination that the product or service, as changed, is suitable under this section. In cases where the change in specifications or amendment appears to affect the Price of a product or service as determined under OAR 125-055-0030, the State Procurement Office also may conduct a new Price determination in response to the request.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835 to ORS 279.855

125-055-0030

Determination of Price

(1) Under ORS 279.845(1)(a), the State Procurement Office shall determine the Price of products and services offered for sale to Agencies that the State Procurement Office has determined to be suitable for procurement by Agencies and placed on the Procurement List.

(2) Determination of Price. The Price determined by the State Procurement Office shall be a reasonable and adequate Price that will recover for the QRF the cost of:

(a) Raw materials;

(b) Labor;

(c) Overhead that is allocable to the particular product or service for which the Price determination is being made, including the actual, reasonable costs of complying with the independent audit requirements of OAR 125-055-0040(1) (For purposes of this subparagraph, overhead cost is allocable to a particular product or service to the extent the overhead costs are chargeable to the production of the product or the performance of the service in accordance with the relative benefits received by the product or service program as compared to the overall activities of the QRF);

(d) Delivery costs; and

(e) An amount held in reserve for inventory and equipment replacement.

(3) Initial Price Determination Procedures:

(a) For products or services the State Procurement Office has determined to be suitable for purchase by Agencies, an Agency or the State Procurement Office shall provide the QRF with a solicitation document and an annotated pricing tabulation that covers the period of the proposed contract for those products or services, the expiring contract, or the most recent solicitation. Additionally, an Agency or the State Procurement Office shall provide the QRF with the scope of work and specifications, if any, that will cover the initial period during which the QRF expects to provide the product or service.

(b) The QRF shall submit its proposed Price to the Agency or the State Procurement Office, based on the volume or scope of the work and specifications acceptable to the Agency, as prescribed in the proposed contract between the QRF and an Agency. The contract may propose to serve a single Agency or multiple Agencies. Where the contract proposes to serve multiple Agencies, the QRF's disclosure of costs under subparagraph (c) of this subsection must address the costs of serving all Agencies the QRF proposes to serve under the contract. The State Procurement Office reserves the right to review and amend a Price determination in light of reductions in or additions to the Agencies served under a multiple Agency contract.

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- (c) In submitting its proposed Price to the Agency or the State Procurement Office, the QRF must make full disclosure of known costs. The disclosure must include documentation, on a form prescribed by the State Procurement Office, that the costs proposed will result in a Price that will permit the QRF to recover the amounts prescribed in subsection (2) of this section and ORS 279.845(1)(a).
- (d) As part of the disclosure, an authorized officer of the QRF must certify that the costs claimed are, to the best of the officer's knowledge, reasonable and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in subsection (2) of this section.
- (e) If the QRF and the Agency agree on the terms and conditions of a proposed contract and the price for the products or services to be provided under the proposed contract, the QRF and the Agency must present the proposed contract (including the agreed price) to the State Procurement Office for review and a determination of the Price.
- (4) Based on the volume or proposed scope of work and the costs disclosed by the QRF under subsection (3) of this section, the State Procurement Office will determine a Price for the products or services offered under the proposed contract. If the State Procurement Office regards the determined Price to be reasonable and adequate to permit the QRF to recover the amounts prescribed in subsection (2) of this section, then it will notify the QRF and the Agency of the Price.
- (5) In determining a reasonable and adequate Price of a product or service, the State Procurement Office may consider:
- (a) Prices of similar products or services purchased in comparable quantities by federal agencies under the authorized federal program (Javits-Wagner-O'Day Act);
- (b) Prices of products or services of similar specifications and quantities previously purchased by government agencies from responsible contractors engaged in the business of selling similar products or services;
- (c) Prices that private businesses pay for similar products or services in similar quantities of comparable scope and specifications if purchasing from a reputable vendor engaged in the business of selling similar products or services;
- (d) Prices of products or services of similar specifications and quantities purchased by Agencies from QRFs under the program created by ORS 279.835 to 279.850.
- (6) A QRF and an Agency shall not execute or implement any contract under the program created by ORS 279.835 to 279.850 until the State Procurement Office has transmitted notice of the Price determined by the State Procurement Office to the Agency and the QRF.
- (7) Re-determinations of Price. A Price established by the State Procurement Office shall apply for the initial term or period of the contract unless otherwise approved by the State Procurement Office. The State Procurement Office may re-determine a Price at the request of a QRF or Agency, or at the discretion of the State Procurement Office. Until the State Procurement Office approves a new Price, the QRF shall continue to provide, at the established Price, the service or product in accordance with the scope of work that was the basis for establishing the existing Price. The Agency shall not pay or agree to pay the QRF any amount other than the Price approved by the State Procurement Office. The State Procurement Office reserves the right, during the process of re-determining a Price, and subject to existing contract rights of the QRF and Agency, to suspend the Price and set an interim Price; such action may trigger a review of the suitability determination for the affected product or service under OAR 125-055-0025.
- (a) In re-determining Price, the State Procurement Office will consider the factors in subsections (2) and (3) of this rule. The State Procurement Office also may take into consideration changes that have taken place since the last Price determination that are pertinent to re-determining Price.
- (b) Each re-determination or adjustment of Price shall be based on changes in the scope of work, changes in the costs of producing the product or performing the service, or both. If the proposed adjustment is based on changes in QRF cost factors, the QRF shall submit to the State Procurement Office and the Agency a request for a Price change showing a breakdown of cost changes with appropriate documentation, as requested by the State Procurement Office or Agency. As part of the request and documentation, an authorized officer of the QRF must certify that the proposed changes in costs are, to the best of the officer's knowledge, genuine, reasonable, and adequate, and that the proposed Price will permit the QRF to recover the amounts prescribed in subsection (2) of this section and ORS 279.845(1)(a). The Price established by the State Procurement Office for a product or service shall remain in effect until the State Procurement Office approves a new Price.
- (c) Agencies and QRFs may not make material changes (changes that affect the cost of providing the products or services in more than a negligible manner) to the specifications of a contract entered into under the program created by ORS 279.835 to 279.850 unless the changes are in writing and have been submitted to the State Procurement Office for a re-determination of Price. The following information reporting is required of the Agency in order to assist the State Procurement Office in Price re-determinations based on changes in contract specifications:
- (A) In the event that the Agency or State Procurement Office wishes to change specifications from the most recent solicitation for the product or service, the Agency or State Procurement Office shall notify the QRF in writing of the specific changes in the scope of work or other conditions which will be required during the new contract period.
- (B) Upon receipt of notice of change, the QRF shall submit a Price recommendation and Price change request under subparagraph (7)(b) of this section to the Agency and State Procurement Office for review and a re-determination of the Price by the State Procurement Office.
- Stat. Auth.: ORS 279.845(1), ORS 184.340

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Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835 to ORS 279.855

125-055-0035

Audits

(1) To maintain qualifications and listing on the Procurement List under OAR 125-055-0015, all QRFs whose total annual Agency contract value exceeds \$20,000 must conduct an annual audit of direct labor to determine compliance with ORS 279.835(5)(c). Each such QRF must submit to the State Procurement Office an audit report and letter of attestation, on forms prescribed by the State Procurement Office, regarding each annual audit. Under the annual reapplication requirement of OAR 125-055-0015(2), a QRF must submit, with each reapplication, an audit report and letter of attestation for the preceding fiscal year of the QRF. Each QRF shall ensure that each of its contracts entered into with an Agency under the program created by ORS 279.835 to 279.850 includes a provision that requires the QRF, if the QRF's total annual value of contracts with Agencies exceeds \$20,000, to conduct an annual audit of direct labor.

(2) The audit shall be conducted by an independent certified public accountant for the same fiscal year as the QRF's annual financial audit.

(3) The audit shall consist of an auditor's examination of the QRF, conducted in accordance with generally accepted auditing principles.

(4) For purposes of subsection (5) of this section:

(a) "Direct labor" means all work required for the manufacture, preparation, processing and packing of products produced by a QRF and all work performed in the rendition of services by a QRF, but does not include supervision, administration or shipping. "Direct labor also does not include client-type services provided by a QRF to Disabled Individuals served by the QRF, such as job training and therapeutic services.

(b) "Supervision" means the direction, assignment, instruction and oversight of individuals performing direct labor, and inspection of work performed or products for quality assurance.

(c) "Administration" means the management activities of a QRF that include acquisition of equipments, parts, supplies and inventory, handling of the entity's payroll, personnel and accounting activities, executive decision-making and other business activities, generally of a centralized nature, that do not entail the "hands-on" production of a product or the performance of a service.

(d) "Shipping" means the transportation of a product to the site designated by the acquirer of the product or the transportation of workers to site at which they will perform services for a customer.

(5) The examination and resultant audit report must be based on the following records and information:

(a) A listing of all products and services provided by the entity in the QRF's fiscal year, including those products and services were procured by Agencies under ORS 279.015 and 279.835 to 279.850 and those which were procured outside the program created by those statutes.

(b) A list of all individuals covered by the audit scope employed by the QRF who are Disabled Individuals who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number, job description and disability status.

(c) A list of all individuals covered by the audit scope employed by the QRF, whether paid or unpaid, who are not Disabled Individuals and who provided direct labor required for the production of products or the performance of services during the fiscal year that is the subject of the audit examination, including employee name, unique employee identification number and job description.

(d) A compilation of the total hours of direct labor actually performed by the QRF during the fiscal year.

(e) Payroll reports for all individuals covered by the audit scope employed by the QRF during the fiscal year, including employee name, social security number, work hours paid, and vacation hours, sick leave hours, and training hours. Hours worked must be segregated from hours paid but not worked.

(f) Time and billing records showing direct hours worked by each employee in the manufacture or provision of goods and services.

(g) Disability status documentation. The QRF must have documentation on file for each employee who is or who is claimed to be a Disabled Individual. The file must include documentation from an officially accredited source that each such person has been determined to be a Disabled Individual as defined in OAR 125-055-0005. The acceptable forms of disability documentation are:

(A) Department of Human Services/Seniors and People with Disabilities Office of Licensing and Quality Care referrals;

(B) Commission for the Blind referrals;

(C) Department of Human Services/Community Human Services, Office of Vocational Rehabilitation Services referrals;

(D) Competitive Employment statements signed by a physician or other Accredited Vocational Consultant stating that the employee is a Disabled Individual as defined in OAR 125-055-0005;

(E) Certifications that the employee is legally deaf and is a Disabled Individual as defined in OAR 125-055-0005;

(F) Certifications that the employee is eligible for Supplemental Security Income (SSI) or Social Security for the Disabled (SSDI) benefits.

(6) The audit report must address the following elements:

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- (a) A determination whether the QRF's time, billing and payroll records are sufficiently complete and reliable to demonstrate compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c). The records must permit segregation of direct labor hours from other hours worked and paid, and allow for assessment of direct hours worked by employees with disabilities, as well as by employees without disabilities.
- (b) If the certified public accountant finds the records to be sufficiently complete and reliable, the certified public accountant must test the QRF's calculation, for the entire applicable fiscal year, of the portion of total direct labor hours that were worked by employees with disabilities. Only direct hours worked shall be included in the calculation. Vacation, sick leave, holiday, training hours, and any other hours paid but not worked by the employee are to be excluded from the calculation.
- (c) The certified public accountant must apply sufficient statistical sampling techniques to obtain an eighty percent level of confidence with a precision of plus or minus ten percent that:
- (A) The direct labor by Disabled Individuals during the QRF's fiscal year satisfied the 75 percent direct labor requirement under ORS 279.835(5) and OAR 125-055-0015(2)(d)(A); and
- (B) The hours reported as worked by persons with disabilities were worked by persons whose disabilities were documented under subparagraph (5)(g) of this rule.
- (d) A determination whether adequate actions have been taken to resolve any prior adverse audit report findings or recommendations.
- (e) The independent certified public accountant that conducted the annual audit shall sign an attestation that the QRF complied or did not comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) during the fiscal year period for which the annual financial audit was conducted. If the Certified Public Accountant attests that the QRF did not comply with the requirement of ORS 279.835(5)(c), the report must include a concise description of the character and extent of the noncompliance.
- (7) Within 120 calendar days after the close of the QRF's fiscal year, each QRF must submit the direct labor audit attestation report for the preceding fiscal year, signed and dated by the independent Certified Public Accountant and by an officer of the QRF's board of directors, to the State Procurement Office. A QRF that must submit an annual reapplication under OAR 125-055-0015(2) must submit the reapplication with its most recent annual direct labor audit report and letter of attestation.
- (8) Failure to comply with the requirements of this section by a QRF shall constitute sufficient grounds to terminate the QRF's listing on the Procurement List under OAR 125-055-0015 and shall constitute sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.
- (9) Failure to comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) shall constitute sufficient grounds to terminate ~~of~~ the QRF's listing on the Procurement List under OAR 125-055-0015 and shall constitute sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRF.
- (10) The cost of the annual audit required by this rule shall be considered an overhead expense that the QRF may recover and which must be taken into account in determining the Price under OAR 125-055-0030.
- (11) If the State Procurement Office determines that a QRF is in material noncompliance with any requirement imposed on it by OAR 125-055-0015 to 125-055-0040, including the qualifications requirements of OAR 125-055-0015, subsection (7) of this rule, or the direct labor requirement of ORS 279.835(5)(c), the State Procurement Office will issue, to the non-complying QRF, a written notice to cure the noncompliance. The written notice will identify the requirement or requirements with which the QRF does not comply, state the reasons that the QRF is not in compliance with the requirements, and prescribe a time period of not less than ninety (90) calendar days, or such other time as may be permitted by the State Procurement Office, within which the QRF must achieve compliance.
- (a) A QRF receiving notice of noncompliance under this subsection must respond in writing, within thirty (30) calendar days of the date of the State Procurement Office's notice, to the State Procurement Office. The response may:
- (A) State the reasons, with supporting documentation, why the QRF is not out of compliance with the requirements, if the QRF believes that it is in compliance;
- (B) Present a plan of action to be taken by the QRF to achieve compliance and propose a date within which it will achieve compliance;
- (C) Request an extension of the time within which the QRF will achieve compliance;
- (D) Report that the QRF has achieved compliance and state the actions the QRF has taken to achieve compliance.
- (b) If the QRF does not submit a written response within the 30-day period from the date of the written notice issued under subsection (11) of this rule or such additional time as may be permitted by the State Procurement Office, the State Procurement Office may terminate the QRF's listing on the Procurement List under OAR 125-055-0015 by issuing to the QRF written notice of the proposed termination and removal of the QRF's products and services from the Procurement List.
- (c) The State Procurement Office reserves the right to require a QRF, as part of the required cure or as part of a plan of action to attain compliance, to submit to the State Procurement Office quarterly audit reports concerning the QRF's compliance with the direct labor requirement of ORS 279.835(5)(c). If a QRF that is subject to this requirement satisfies the direct labor requirement in the first two consecutive quarterly audits, the State Procurement Office may waive the quarterly audit requirement for that QRF. However, if the QRF next succeeding annual audit discloses that the QRF failed to satisfy the direct labor requirement, the State Procurement Office will institute disqualification proceedings by issuing to the QRF a notice of termination under subparagraph (d) of this subsection.
- (d) If the QRF fails to achieve compliance with the violated requirements within the time prescribed in the State Procurement Office's written notice issued under subsection (11) of this rule, within the time proposed in a QRF's plan of action approved by the State

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Procurement Office, or within the time permitted under any extension of time granted by the State Procurement Office, the State Procurement Office will terminate the QRF's listing on the Procurement List under OAR 125-055-0015 by issuing to the QRF written notice of that termination and of the removal of the QRF's products and services from the Procurement List.

(e) After any termination of a QRF's listing on the Procurement List under OAR 125-055-0015, the QRF shall not enter into or renew any contracts under the program created by ORS 279.835 to 279.850. Any termination of a QRF's listing on the Procurement List also shall constitute sufficient grounds for any Agency to terminate any contract with the QRF.

(f) If the QRF requests, within ten (10) calendar days of its receipt of notice of termination, an informal hearing concerning the validity of the grounds for termination stated in the notice, the termination will not become effective until the conclusion of the informal, non-contested case hearing process. If the QRF fails to request a hearing within this ten-day period, the termination shall become effective on the eleventh day.

(A) As the result of the hearing process, the State Procurement Office may either reach written agreement with the QRF or, if no agreement is reached, issue an order that resolves the issues raised by the QRF and, if no resolution satisfactory to the State Procurement Office results from the hearing process, the order may provide for termination of the QRF's listing on the Procurement List under OAR 125-055-0015 and removal of the QRF's products and services from the Procurement List.

(B) After any hearing, the State Procurement Office may issue an order that resolves the issues raised by the QRF and, if the determination is adverse to the QRF, the order may provide for termination of the QRF's listing on the Procurement List under OAR 125-055-0015 and removal of the QRF's products and services from the Procurement List. The State Procurement Office's written decision under this subsection shall constitute a final order under ORS 183.484.

(g) After any termination of a QRF's listing on the Procurement List under OAR 125-055-0015, the QRF shall not enter into or renew any contracts under the program created by ORS 279.835 to 279.850. Any termination of a QRF's listing on the Procurement List also shall constitute sufficient grounds for any Agency to terminate any contract with the QRF.

(h) After the passage of one year after the effective date of a termination of a QRF's listing on the Procurement List under this section, a terminated QRF may again make an application to be listed as a QRF under OAR 125-055-0015.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835 to ORS 279.855

125-055-0040

General Provisions

(1) Contracting Authority. The Department of Administrative Services and other Agencies must contract directly with a QRF for a contract to qualify for the exception from the competitive procurement requirement in ORS 279.015(1)(b) for contracts under the program created by ORS 279.835 to 279.850. Contracts between multiple Agencies and a QRF satisfy this requirement that the Agencies must contract directly with a QRF.

(2) Contract Disputes. Contract performance issues and disputes arising out of contracts entered into under the program created by ORS 279.835 to 279.850, such as disputes concerning timely delivery of products or performance of services or compliance with specifications, must be resolved exclusively between the QRF and the Agency that is a party to the contract, and will not be resolved by the State Procurement Office (except where the Department of Administrative Services is a party to the contract with the QRF).

(3) Temporary Services. In each contract for the provision of temporary services entered into by a state agency under the program created by ORS 279.835 to 279.850, the QRF must monitor the prior and current work assignments of its employees who work under the contract to ensure that no employee performs services for a state agency in excess of a total of 1,040 hours during any consecutive twelve-month period. Contracts for the provision of temporary services by QRFs may be used only to meet temporary, emergency, non-recurring, unexpected, or short-term workload demands of state agencies.

(4) Competitive Public Contract Bidding by a QRF. If a QRF submits, to any Agency, a competitive bid, proposal, quote or other offer ("offer") in a competitive procurement for a public contract, then regardless of whether the offer was accepted, that QRF may not, at any time during the initial term of the contract for which the QRF submitted a bid, proposal or offer, make any claim to the Agency that instituted the procurement for the public contract that the product or service that was the subject of the offer should have been subject to the set-aside program created by ORS 279.835 to 279.850.

(5) A QRF shall not enter into a public contract with an Agency under the program created by ORS 279.835 to 279.850 unless the contract complies with OAR 125-055-0005 to 125-055-0040 and the products or services that are the subject of the contract are listed on the Procurement List. Any liabilities or expenses that may arise from the establishment of a contract that violates this subsection shall be those exclusively of the QRF and Agency, respectively, that purports to enter into such a contract.

(6) QRF Records.

(a) Each QRF shall maintain accurate and correct records of the direct labor hours performed in the nonprofit agency by each worker in a manner sufficient to determine compliance with the 75 percent direct labor requirement of ORS 279.835(5)(c).

(b) Each QRF shall make its records available, at any reasonable time, for inspection by the State Procurement Office, the Office of the Oregon Secretary State, and their officers and representatives.

(7) Application of These Rules.

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(a) OAR 125-055-0015 shall apply to applications and annual reapplications for participation in the program created by ORS 279.835 to 279.850 that are presented to the State Procurement Office, or which are due, after August 31, 2003. OAR 125-055-0020 shall apply to requests for determinations that a product or service is suitable for addition to the Procurement List that are presented to the State Procurement Office after August 31, 2003. OAR 125-055-0030 shall apply to determinations of Price first submitted to the State Procurement Office after August 31, 2003. OAR 125-055-0035 shall apply to direct labor audit reports that are due under OAR 125-055-0035(7) after August 31, 2003.

(b) For determinations of suitability of a product or service that were made prior to the effective date of these rules, the maximum five-year term of determinations of suitability under OAR 125-055-0020(10)(a) shall expire five years from the effective date of these rules.

(c) The adoption of these rules shall not affect the validity of:

(A) Any determination that a QRF was qualified for participation in the program;

(B) Any determination that a product or service was suitable for addition to the Procurement List; or

(C) Any determination of Price;

made prior to the effective date of these rules.

(8) The State Procurement Office reserves the right to extend any deadline or time within which a QRF or a party to any proceedings under OAR 125-055-0015 to 125-055-0040 must take any action under those rules if the affected party applies in writing for relief to the State Procurement Office and demonstrates in writing that special circumstances warrant the grant of such relief. For the purpose of this subsection, special circumstances that warrant the grant of relief include practical exigencies that reasonably can be regarded as imposing a substantial, practical impediment to the QRF's or party's ability to meet the deadline or achieve the correction of a violation of rules. Special circumstances are circumstances beyond the reasonable control of the organization including, but not limited to, the illness or other incapacity of key officers of the organization seeking relief, emergency reorganizations or replacements of the corporate structure, board of directors or executive officers of the organization, acts of God and comparable practical impediments to a person or organization's ability to meet a deadline or achieve the correction of a violation of rules. The grant or denial of relief under this subsection must be determined by the Chief Procurement Officer or, in the absence of the Chief Procurement Officer, by an officer of the State Procurement Office who specifically has been delegated that task. The State Procurement Office also reserves the right to waive or to permit the correction of minor or technical violations of OAR 125-055-0015 to 125-055-0040.

Stat. Auth.: ORS 279.845(1), ORS 184.340

Stats. Implemented: ORS 279.015 (1)(b), ORS 279.835 to ORS 279.855

OAR 125-055-0045

Purchases under ORS 279.855

(1) Policy. QRFs, residential programs and public benefit corporations recognized by ORS 279.855 may acquire equipment, materials, supplies and services under the same conditions as state agencies that, under ORS 279.712(2), are not subject to the requirement that the Oregon Department of Administrative Services provide for their acquisition of such items. Accordingly, QRFs, residential programs and public benefit corporations must enter into an agreement with the department in order to participate in the Oregon Cooperative Purchasing Program. The agreement must have substantially the same form, content and obligations as the standard agreement prescribed by the State Procurement Office that state agencies must execute in order to participate. In addition, QRFs, residential programs and public benefit corporations must comply with the applicable subsections of this rule to acquire equipment, materials, supplies or services under ORS 279.855.

(2) QRFs that currently are approved under OAR 125-055-0015 may purchase equipment, materials, supplies and services through the State Procurement Office in the same manner as state agencies, as provided in ORS 279.545 to 279.746 and 279.820 to 279.824.

(3) A residential program seeking to purchase equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must make a written request to the State Procurement Office to which is attached a true and correct copy of its currently effective contract with the Department of Human Services to provide services to youth in the custody of the state. In addition, the residential program must submit a letter from the Oregon Department of Human Services, on the letterhead of that department or of a division of that department that contains the following information:

(a) The services the residential program must provide, including the scope of those services, under the currently effective contract with the Department of Human Services;

(b) The Department of Human Services contract number;

(c) The starting date and expiration date of the contract; and

(d) The name, original signature, mailing address and telephone number of the Department of Human Services' Contract Administrator for the contract.

(4) A public benefit corporation seeking to purchase equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must make a written request to the State Procurement Office to which is attached:

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- (a) A certification by an authorized officer of the public benefit corporation that the applicant qualifies as a public benefit corporation under ORS 65.001;
 - (b) A true and correct copy of documentation, which may include the corporation's currently effective articles of incorporation, that demonstrates that the corporation is tax exempt under §501(c)(3) of the Internal Revenue Code and that the corporation is not a religious corporation as defined in ORS 65.001[~~(33)~~];
 - (c) A true and correct copy of at least one currently effective contract between the public benefit corporation and a state agency or unit of local government by which the corporation's contract performance is funded at least in part with state funds; and
 - (d) A letter from the state agency or unit of local government that confirms the existence and effectiveness of the contract submitted under subparagraph (c) of this subsection, on the letterhead of the state agency or unit of local government, that contains the following information:
 - (A) The services the public benefit corporation must provide, including the scope of those services, under the contract submitted under subparagraph (c) of this subsection;
 - (B) The contract number;
 - (C) The starting date and expiration date of the contract; and
 - (D) The name, original signature, mailing address and telephone number of the state agency or unit of local government's Contract Administrator for the contract.
 - (5) Neither the State Procurement Office nor the State of Oregon shall be liable for any obligation or debt entered into on behalf of a QRF, a residential program or a public benefit corporation, and likewise shall not be liable for any obligation or debt incurred by a QRF, a residential program or a public benefit corporation, in making purchases under subsections (1) to (3) of this rule.
 - (6) Each residential program and public benefit corporation that makes any purchase of equipment, materials, supplies or services through the State Procurement Office under ORS 279.855 must notify the State Procurement Office in writing whenever a contract that is necessary for the organization to qualify under ORS 279.855 expires, is terminated, or is not renewed, and whenever the organization otherwise ceases to qualify under ORS 279.855 or this rule.
- Stat. Auth.: ORS 279.845(1), ORS 184.340
Stats. Implemented: ORS 279.855

See sample report on page 18.

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Report Date

Independent Accountant's Report (Unqualified)

To: [QRF]:

We have examined [QRF's] compliance with requirements set out in ORS 279.835 to 279.855, and OAR 125-055-0035, with regard to direct labor hour requirements during the period of _____ through _____ (the QRF's fiscal year). Management is responsible for [QRFs]'s compliance with those requirements. Our responsibility is to express an opinion on [QRF]'s compliance based upon our examination.

Our examination was conducted in accordance with standards established by the American Institute of Certified Public Accountants, and , accordingly, included examining, on a test basis, evidence about [QRF]'s compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on [QRF]'s compliance with specified requirements.

In our opinion, [QRF] complied/did not comply, in all material respects, with the aforementioned requirements during the period of _____ though _____. The percentage of the direct labor hours performed by employees with certified disabilities is at [] percent.

Firm Signature
Firm Location

QRF Board Member Signature: _____