

DIVISION 6

PROCEDURES FOR CONTRACTS ENTERED INTO WITH THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

123-006-0005

Purpose

Pursuant to ORS 285A.075(3), the department may enter into contracts as necessary or appropriate to carry out its authorized mission. This rule sets forth the Department's procurement and contracting procedures. This rule does not apply to financing contracts, grants, interagency or intergovernmental agreements, office leases, or contracts specifically directed by statute.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

~~123-006-0015~~

~~Definitions~~

~~(1) "Director" means the Director of the Economic & Community Development Department.~~

~~(2) "Department" means the Economic & Community Development Department.~~

~~Stat. Auth.: ORS 285A.075~~

~~Stats. Implemented: ORS 285A.075 & 279A.070~~

~~Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08~~

123-006-0020

Standard Procedures and Exceptions

The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, divisions 046, and 047, as applicable, for all its procurement and contracting activity, with the following exceptions:

(1) For Architectural, Engineering, Land Surveying and Related Services contracts, a special class of personal services contracts, the Department will comply with OAR chapter 137, division 048. Services defined as Related Services are subject to 123, Division 6.

(2) For contracts relating to the Department's foreign trade offices operating outside the state, the Department will comply with OAR chapter 123, division 125.

(3) For contracts, other than those identified in (1) or (2) of this rule, that are best implemented as multiple work order contracts under an Agreement for Goods or Services, the Department will comply with OAR 123-006-0025.

(4) The provisions of OAR 137-047-0800, 137-047-0265(2) and 137-047-0270(4) (regarding contract amendments) do not apply to contracts by the Department.

(5) The provisions of OAR 137-047-0670 (regarding cancelled offers) do not apply to contracts by the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

123-006-0025

Use of Work Order Contracts

(1) Contracts may be implemented as multiple Work Order Contracts under an Agreement for Goods or Services instead of a single contract if that implementation will provide substantial savings in time or cost, or both.

(2) The Department and the selected contractor will sign a non-binding Agreement for Goods or Services, in which the Contractor acknowledges its readiness to enter into separate work order contracts with the Department that will describe, among other things, the specific goods or services to be performed, the timeline for delivery, and the compensation. Each Work Order Contract subsequently executed with the Contractor pursuant to the non-binding Agreement for Goods or Services must be within the scope of the solicitation, if any, and will constitute a separate legally binding contract between the Department and the Contractor.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.070

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

123-006-0030

Electronic Public Notice

For all required public notices or advertisements related to source selection methods, the Department may publish the notice or advertisement on the Department of Administrative Services ORPIN Electronic Procurement System instead of publishing notice in a newspaper of general circulation as described in ORS 279B.055(4)(b).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

Contract Amendments

(1) **General Rule.** The Department may amend any contract without additional competition, including reinstatements and cost overruns, but only when the Department has determined:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract; or in the instance of a Special Procurement, the approval of Special Procurement;

(b) The amended Contract does not adversely affect the competitive conditions for the original contract; and

(c) If the Contract was selected according to the Small Procurement method, the total compensation does not exceed \$5000, or, if selected according to the Intermediate Procurement method, the total compensation does not exceed \$150,000.

(2) Anticipated Amendments.

(a) "Anticipated Amendment" means the Department has text in any Solicitation Document and the Contract that explains:

(A) The possibility of one or more Amendments;

(B) A general description of circumstances that might require an Amendment to be issued under the Contract and any changes to the requirements of the Contract that may be anticipated or even planned for, but not necessarily quantified at the time of Contract execution. These changes may be described in any Solicitation and Contract as, for example: Extra Work or Goods; Additional Work; Work to be done if certain situations are encountered; or Changes in terms, conditions, price, or type of Work; etc.; and

(C) The provisions of the Contract that are subject to negotiation in order to finalize the details and costs of such an Amendment.

(b) Anticipated Amendments do not include cost overruns or reinstatements.

(c) The Department may make one or more Anticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, subject to section (1) of this rule.

(3) Unanticipated Amendments.

(a) Unanticipated Amendment" means any Amendment that does not meet the requirements of an Anticipated Amendment. Unanticipated Amendments do not include cost overruns or reinstatements.

(b) Limited Amount. The Department may make one or more Unanticipated Amendments to a Contract without any additional competitive process, provided the cumulative amounts of all Unanticipated Amendments do not exceed 20% of the Original Contract amount, and subject to section (1) of this rule.

(c) Unlimited Amount. The Department may make one or more Unanticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, subject to section (1) of this rule, and provided the Department's Designated Procurement Officer gives written approval of the Unanticipated Amendment as meeting the following requirements:

(A) The Unanticipated Amendment is due to circumstances that were unforeseen at the time the original Contract was established;

(B) The Unanticipated Amendment does not represent any important general change that alters the essential identity or main purpose of the original Contract, nor is of such importance that it should be a new undertaking; and

(C) The Unanticipated Amendment serves the public interest, including specific reasoning to support that conclusion. Reasons may include, but are not limited to: To address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed or Goods delivered; to comply with official or judicial commands or directives issued during contract performance; or to ensure that the purpose of the Contract will be realized.

(4) Cost Overruns.

(a) Unless the Contract provides that the maximum total compensation is based on an estimate and is subject to amendment, if Contractor expends all authorized compensation but the required Goods, Work or Services are not complete or are not satisfactory, Contractor is responsible to complete the Goods, Work or Services to Department's satisfaction without further compensation.

(b) Notwithstanding the general rule in subsection (4)(a) above, Department may, by Amendment to the Contract, agree to increases in the maximum total compensation, subject to section (1) of this rule, and provided the Department's Designated Procurement Officer gives written approval of the Cost Overrun Amendment as meeting the following requirements:

(A) The cost overrun arose out of circumstances or conditions encountered in the course of contract performance that were unavoidable and not reasonably anticipated at the time of the original Contract, or the most recent Amendment, if any;

(B) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Goods, Work or Services rendered; and

(C) The Cost Overrun Amendment serves the public interest, including specific reasoning to support that conclusion. Reasons may include, but are not limited to: To address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed; to comply with official or judicial commands or directives issued during contract performance; or to ensure that the purpose of the Contract will be realized.

(5) Reinstatements.

(a) "Reinstatement" of an expired Contract means an amendment to restore the full action of the Contract as though the expiration had not occurred, and extend the Contract to a new expiration. A reinstatement may be combined with any other amendment allowed by this rule.

(b) The Department's Designated Procurement Officer may give written approval to reinstate an expired Contract if the following requirements are met:

(A) The failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions, or if due to administrative mistake, the reason for the mistake and the steps taken to prevent similar mistakes;

(B) The expiration occurred in good faith on the part of both the Department and the Contractor;

(C) The reinstatement furthers the public interest, compared to a separate procurement process, including specific reasoning to support that conclusion; and

(D) The request to reinstate must be made no later than 90 days after expiration of the original Contract.

(c) When a Contract is reinstated pursuant to this section, the Department may compensate the Contractor only at the rate or terms of compensation established in the original Contract, for Goods, Work or Services performed in the interim between the expiration of the original Contract and the execution of the Reinstatement Amendment.

(6) Amendments of Contracts for Architectural, Engineering and Land Surveying Services and Related Services. This rule does not apply to amendments of Contracts for Architectural, Engineering and Land Surveying Services and Related Services. The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, division 048 for amendments to such contracts.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.070

Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

123-006-0040

Contracts Must be Authorized Prior to Performance

All Contracts, including any amendments, must be in writing and fully executed before any Work or Services may be performed or payment made. Contractors are not entitled to payment for any Work or Services performed prior to such execution.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.070

Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

123-006-0045

Sole Source Procurements, by Rule.

The Department may procure goods or services for the following subjects without competition:

(1) **Advertising.** This covers all types of advertising, including booth space at trade shows and exhibitions.

(2) **Bond Counsel.** The Department will follow the procedures and requirements of ORS 286A.130 and any applicable Oregon Administrative Rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075, 279A.070 & 279B.075

Hist.: EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08