

Agenda Item No.:	1
Title and # of Issue:	Administrative Work Plan 0, IBI 2, Governance
Presentation Title:	Temporary Amendment to OAR 629-041-0100 Adoption and Approval to Begin Permanent Rulemaking
Date of Presentation:	March 23, 2009
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**SUMMARY**

The purpose of this Agenda item is to ask the Board of Forestry to temporarily amend OAR 629-041-0100, and to direct the Forester to begin permanent rulemaking procedures to replace the temporary amendment within 180 days. The amendment will establish procedural rules for the competitive solicitation of agreements for the prevention and suppression of fire on forestland and other lands by adopting by reference two divisions of the Attorney General’s Model Public Contract Rules, OAR chapter 137, divisions 046 and 047 (2008). The temporary amendment applies to solicitations that were issued on or after February 1, 2009.

**CONTEXT**

Oregon law requires state agencies engaging in procurement of services to use the Department of Administrative Services (DAS) Public Contracting Rules unless specifically exempted. In 2005, ORS 279.025 (2)(m) was amended to exempt “contracts for forest protection or forest related activities as described in ORS 477.406...” ORS 477.406 states that “Contracts and agreements... must be negotiated in accordance with procedures specified by rules of the State Board of Forestry.”

Adoption of the Temporary Rule that amends OAR 629-041-0100 will satisfy this requirement and allow the Department to use independent statutory authority to enter into contracts and agreements using the Attorney General’s Model Public Contract Rules.

**BACKGROUND AND ANALYSIS**

Previously, the Department of Forestry regarded agreements such as the airtanker, helicopter and Interagency Firefighting Crew Agreement as falling under the contracting authority of the Oregon Department of Administrative Services (DAS) under ORS 279A.140(1). In that case, the DAS contracting rules, OAR chapter 125, divisions 246 and 247, applied to competitive solicitations of the agreements. The Department recently discovered, however, that the Fire Protection Program has independent contracting authority under ORS 477.406 and ORS 279A.050(6)(L). Consequently, the Fire Protection Program can no longer automatically use the DAS contracting rules, and now must adopt its own rules to specify procedures for competitive contracting for fire prevention and suppression services.

Specialists within the Department of Justice who have significant experience in reviewing, approving and defending the agreements that the department regularly enters into have advised the department that the “ready-made” contracting rules in the Attorney General Model Rules are best suited for our fire protection related solicitations. In the longer term, rules custom designed for the Department of Forestry may be contemplated, but adoption of the model rules will provide the framework necessary to carry on the important work of fire protection in the near term.

#### **RECOMMENDATION**

The Department recommends the Board of Forestry amend OAR 629-041-0100 by temporary rule, effective upon filing with the Secretary of State’s office, and direct the Department to begin Permanent Rulemaking to similarly amend OAR 629-041-0100.

#### **NEXT STEPS**

Upon adoption of the temporary rule, the Department’s Procurement Unit will use the Model Rules during applicable procurement processes. The Department will also begin the Permanent Rulemaking process and likely return to the Board for permanent rule amendment at its September 2009 meeting.

#### **ATTACHMENTS**

- (1) Proposed Temporary Rule
- (2) Statement of Need and Justification