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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DAS 3-2020
CHAPTER 125
DEPARTMENT OF ADMINISTRATIVE SERVICES

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Implementing HB 494 (2019) and changing the name from QRF Program to Oregon Forward.

EFFECTIVE DATE: 09/22/2020 THROUGH 03/20/2021

AGENCY APPROVED DATE: 09/22/2020

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Filed By:
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NEED FOR THE RULE(S):

Comply with legislative changes in SB 494 (2019). Modernize and rebrand the Program.

JUSTIFICATION OF TEMPORARY FILING:

Clarification of the statutory changes which were effective September 29, 2019. Dissemination and use of the new program name is scheduled for October 1, 2020.

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s);

Ongoing confusion about the (soon to be formerly) QRF program's direct labor requirement due to inconsistency in the rules. Certified Public Accountants are currently performing direct labor audits and have been and are confused by the inconsistency in rule. This may cause difficulty in providing an attestation to the adherence to the requirements of the program.

The program is controversial and any inconsistencies will make the implementation of the name change more confusing for participant Oregon Forward Contractors (formerly QRF) and the public agencies, both local and state governments, who are required to use those contractors.

Due to these facts, there could be fewer contracting opportunities for these nonprofit employers of individuals with disabilities.

(2) Who would suffer these consequences;

The individuals with disabilities employed through this program, their nonprofit employers, and the public agencies required to use the services provided through the program would be affected.

(3) Why or how failure to immediately take rulemaking action would cause these consequences;

Any confusion for the direct labor requirement will necessarily weaken the program, and cast doubt for the program's requirements. The name change, if inconsistently implemented will make public agency buyers less certain for the requirements of this mandatory step of the buy decision.

4) How the temporary action will avoid or mitigate those consequences.

Implementing temporary rules, which will be changed to permanent rules before the end of the six month deadline, will provide for consistency with the statute. It will also provide for a smoother transition to a new name for this controversial contracting program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

SB 494 <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB494>

RULES:

125-055-0005, 125-055-0010, 125-055-0015, 125-055-0016, 125-055-0017, 125-055-0020, 125-055-0025, 125-055-0030, 125-055-0035, 125-055-0037, 125-055-0040, 125-055-0045

AMEND: 125-055-0005

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0005

Definitions ¶¶

As used in OAR 125-055-0005 to 125-055-0045:¶¶

- (1) "Agency" means a public agency, as defined in ORS 279.835(5).¶¶
- (2) "Community Rehabilitation Program" (CRP) means a nonprofit organization for Individuals with Disabilities providing or facilitating one or more of the following services to Individuals with Disabilities, enabling them to maximize their opportunities for employment:¶¶
 - (a) Medical, psychiatric, psychological, social, and vocational services;¶¶
 - (b) Physical, occupational and recreational therapy;¶¶
 - (c) Speech, language, and hearing therapy;¶¶
 - (d) Assessment for determining eligibility and vocational rehabilitation needs;¶¶
 - (e) Job development, placement, and retention services;¶¶
 - (f) Psychosocial rehabilitation services;¶¶

(g) Supported employment services;¶

(h) Services to family members, if necessary, to enable the applicant or eligible individual to achieve an employment outcome; and¶

(i) Personal assistance services.¶

(3) "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.¶

(4) "Contract" means any written obligation between a QRFn OFC and an Agency established through the QRF Oregon Forward Program, excluding any Purchase Orders and Work Orders employing workers who will not be displaced by Purchase Order or Work Order completion, expiration, or termination. "Contract" also excludes a Purchase Order or Work Order for which an immediate replacement is not contemplated or required by the Agency. "Contract" includes:¶

(a) Price Agreements, which are established between a QRFn OFC and the Department to enable Agencies to purchase QRF Oregon Forward products and services using Department approved ordering instruments.¶

(b) When a QRFn Oregon Forward service engagement has not been ordered under a Price Agreement between a QRFn OFC and the Department, any QRF OFC engagement specific to an Agency established for prescribed services, between that Agency and a QRF provider through the QRFn OFC through the Oregon Forward program.¶

(5) "Department" means the Oregon Department of Administrative Services.¶

(6) "Individual with a Disability," or "Individuals with Disabilities" as defined in ORS 279.835(4), means a person or people who experience a residual, limiting condition resulting from an injury, disease or congenital defect, which affects the person's functional capabilities (including but not limited to mobility, communication, self-care, self-direction, work tolerance, or work skills) such that the person relies on specialized employment services to find and keep employment.¶

~~(7) "Price" means the cost to Agencies of the products and services procured through the QRF Program, as determined under OAR 125-055-0030.¶~~

~~(8) "Procurement List" means a listing of those QRFs currently qualified under OAR 125-055-0015 to participate in the QRF Program and includes, as required by ORS 279.850(1), a list of the products and services offered by QRFs and determined by the Department, under OAR 125-055-0020, to be suitable for purchase by Agencies.¶~~

~~(9) "Qualified Rehabilitation Facility (QRF Oregon Forward Contractor (OFC))" means an organization operating as a CRP:¶~~

~~(a) That is organized under the laws of the United States or of this state to provide training or employment in this state for Individuals with Disabilities, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;¶~~

~~(b) That complies with any applicable occupational health and safety standard required by the laws of the United States or of this state; and¶~~

~~(c) That employs Individuals with Disabilities in the manufacture of products or in the provision of services for external customers, whether or not the products or services are procured under ORS 279.835 to 279.855, for not less than:¶~~

~~(A) 75 percent of the work hours of the QRF's direct labor during a fiscal year that begins on or before June 30, 2019.¶~~

~~(B) 65 percent of the work hours of the QRF OFC's direct labor during a fiscal year that begins on or after July 1, 2019, and before June 30, 2021.¶~~

~~(C) 60 percent of the work hours of the QRF OFC's direct labor or the direct labor ratio required by the federal program established by the Javits-Wagner O'Day Act or any successor federal program, whichever is lower, during a fiscal year that begins on or after July 1, 2021. If the federal ratio established under 41 USC §8501 is amended to state a direct labor percentage that is lower than the percentage prescribed by ORS 279.835(6)(c)(C), the Department will initiate rulemaking to consider the application of ORS 279.835(6)(c)(C) to the QRF Program.~~

¶

~~(10) "ORF Oregon Forward Program."~~¶

(8) "Price" means the cost to Agencies of the products and services procured through the Oregon Forward Program, as determined under OAR 125-055-0030.¶

(9) "Procurement List" means a listing of those OFCs currently qualified under OAR 125-055-0015 to participate in the Oregon Forward Program and includes, as required by ORS 279.850(1), a list of the products and services offered by OFCs and determined by the Department, under OAR 125-055-0020, to be suitable for purchase by Agencies.¶

(10) "Oregon Forward Program" means the program created by ORS 279.835 to 279.855.

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0010

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

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 Department, from a QRFn OFC 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.¶¶

(a) Agencies must not develop specifications that inhibit or tend to discourage Public Contracting with QRFOFC providers for the acquisition of QRF Oregon Forward-produced products or services.¶¶

(b) Agencies must not enter into lease agreements or other agreements to purposely eliminate the possibility of that Agency entering into an agreement with a QRFn Oregon Forward provider.¶¶

(2) It is the policy of the Department to assist QRFOFCs by administering a program to:¶¶

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

(b) Ensure that QRFOFCs meet the standards set forth in the QRF Oregon Forward Program; and¶¶

(c) Assist and facilitate Agencies in entering into contracts with QRFOFCs for the provision of products and services thereby promoting the requirements of ORS 279.835 to 279.855.¶¶

(3) In administering the QRF Oregon Forward Program, the Department, Agencies and QRFOFCs must keep in mind the purpose of the law: to encourage and assist Individuals with Disabilities to achieve maximum personal independence in their communities through productive, gainful employment by assuring an expanded and constant market for QRF Oregon Forward products and services.¶¶

(4) In promoting the policy of this section and ORS 279.850(2), the State Chief Procurement Officer (CPO) may appoint uncompensated volunteer members to serve on an advisory council to make recommendations to the CPO concerning the facilitation and administration of the QRF Oregon Forward Program. The CPO's authority to appoint advisory council members includes the authority to remove and replace members in the CPO's sole discretion. Meetings of the advisory council are not subject to the public meetings law (ORS 192.610 to 192.710). However, the Department will post notice of the times and places of meetings of the advisory council on a website maintained by the Department. The Department reserves the right to change the meeting time and place after the posting of the meeting notice.

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0015

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0015

Application for ~~QRF~~Oregon Forward Qualified Nonprofit Agency Participation ¶¶

(1) A CRP that seeks to participate in the ~~QRF~~Oregon Forward Program must submit a complete application to the Department on a Department-prescribed form. Exhibits submitted with the application must include:¶¶

(a) IRS 501(c)(3) letter;¶¶

(b) Articles of Incorporation;¶¶

(c) Bylaws;¶¶

(d) Mission Statement;¶¶

(e) A description of how the applicant is operating as a CRP; and¶¶

(f) A written plan for the applicant's compliance with the direct labor requirement of ORS 279.835(5).¶¶

(2) The Department reserves the right to require applicants to provide additional information.¶¶

(3) If the Department determines that the applicant is qualified, it will send the applicant notice of ~~QRF~~OFC status. If the Department does not find the applicant qualified, it will reject the application and notify the applicant in writing of the criteria not satisfied.¶¶

(4) The applicant may submit a written appeal to the Department within ten (10) calendar days of the date of the rejection notice. The appeal must state the error in the Department's decision. If the applicant does not appeal the Department's decision, the decision is final.¶¶

(5) On appeal, if the Department determines the applicant is then qualified, it will send written notice to the applicant of ~~QRF~~OFC status. If the Department finds no error in its determination, it will provide the applicant a written notice confirming the decision. The Department's written notice under this subsection constitutes a final order under ORS 183.484.

Statutory/Other Authority: ~~184.340~~, ORS 279.845(1), ~~184.340~~

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0016

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0016

QRFOFC Status and Annual Reporting ¶

(1) A QRFn OFC is required, during the QRFOFC's fiscal year, to employ individuals with a Disability for not less than 75 percent of the total work hours of direct labor required for the manufacture or provision of all products or services produced by the QRF. The 75 percent direct labor requirement need not be met with respect to each product or service provided by the QRF, or with respect to each contract the QRF enters into under the QRF Program adhere to the direct labor requirement as described in OAR 125-055-0005(9)(c).¶

(2) All participating QRFOFCs must submit, on a Department-prescribed form, information from their preceding fiscal year. The Department will evaluate this information to determine compliance with ORS 279.835(5).¶

(3) The QRFOFC must submit its annual report to the Department within 120 calendar days after the close of the QRFOFC's fiscal year.¶

(4) A QRFn OFC may request an extension in writing prior to the 120-day deadline. The request must state the reason for the extension and the anticipated date of submission.¶

(5) The Department will evaluate the annual report for accuracy and compliance with ORS 279.835(5). If the Department determines that the QRFOFC meets the requirements, it will send written notice of qualification to the QRFOFC.¶

(6) If the Department determines that a QRFn OFC is noncompliant with any requirements of ORS 279.835(5), the Department will issue a written notice to the QRFOFC. The written notice will state the reasons the QRFOFC is not compliant and provide potential remedies.¶

(a) A QRFn OFC receiving notice of noncompliance under this subsection must respond to the Department within thirty (30) calendar days of the date of the Department's notice. The QRFOFC's response must acknowledge receipt of the notice and describe a corrective action plan.¶

(b) If the QRFOFC does not respond within thirty (30) calendar days from the date of the written notice, the Department will issue to the QRFOFC written notice of the proposed termination of the QRFOFC's participation in the QRFOregon Forward Program. The Department's written decision under this subsection constitutes a final order under ORS 183.484.¶

(c) The Department may require the QRFOFC, as part of the required cure, to submit to the Department quarterly audit reports concerning the direct labor requirement of ORS 279.835(5). The Department may require the quarterly audits to be conducted and reported by a CPA in accordance with OAR 125-055-0035.¶

(7) If the QRFOFC fails to achieve compliance within the time prescribed by the Department, the QRFOFC will receive a written notice of termination.¶

(a) The QRFOFC may submit a written appeal to the Department within ten (10) calendar days of the date of the termination notice. The appeal must state the QRFOFC's grounds for appealing the decision. If the QRFOFC does not appeal the Department's decision, the termination of the QRFOFC's participation in the QRFOregon Forward Program is final.¶

(b) On appeal, if the Department determines the QRFOFC is then qualified, it will send the QRFOFC notice of qualification. If the Department does not find the QRFOFC qualified, it will provide the QRFOFC a written decision that states the reasons for that determination. The Department's written decision under this subsection constitutes a final order under ORS 183.484.¶

(8) After any termination of a QRFn OFC's participation in the QRFOregon Forward Program, the QRFOFC may not enter into or renew any contracts under the QRFOregon Forward Program. Termination of QRFOFC status also constitutes sufficient grounds for an Agency to terminate any contract procured under the QRFOregon Forward Program. The Department will post notice of the termination of a QRFn OFC's participation in the QRF

Oregon Forward Program on the website or other accessible online posting address administered through the Department. The QRFOFC may re-apply no earlier than one year from the date the termination became final.¶
(9) Nothing in this rule may be construed as prohibiting the Department and the QRFOFC from resorting to informal dispute resolution measures such as non-binding arbitration or mediation.

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0017

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0017

Record Keeping ¶

(1) All participating QRFOFCs must maintain current records for each Individual with a Disability employed by the organization. The records must contain the disability documentation source and when required, a Competitive Employment statement. A Competitive Employment statement is not required for Individuals with a Disability qualified by the Social Security Administration due to their disability.¶

(a) Competitive Employment Statement. The Competitive Employment statement is a Department form signed by the QRFOFC executive and prepared by a person qualified by training and experience to evaluate the work potential, interests, aptitudes and abilities of Individuals with a Disability.¶

(b) Acceptable Disability Documentation Sources:¶

(A) A letter on United States Veterans Administration letterhead stating that the individual has been determined eligible for vocational services due to his or her disability;¶

(B) A letter on Social Security Administration letterhead stating the individual is eligible for benefits due to his or her disability;¶

(C) Documentation from the Oregon Department of Human Services (DHS) or a DHS-designated Community Developmental Disability Program that the individual has an existing disability. "Community Developmental Disability Program" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities operated by or under a contract with the DHS, Seniors and People with Disabilities Division or a local mental health authority;¶

(D) Documentation from the Oregon Commission for the Blind that the individual has been determined to have a disability;¶

(E) Documentation from a Qualified Mental Health Professional that the individual is determined to have mental illness. A "Qualified Mental Health Professional" means any person meeting the following minimum qualifications as defined in OAR 309-114-0005:¶

(i) Graduate degree in psychology;¶

(ii) Bachelor's or graduate degree in nursing and licensed in the State of Oregon;¶

(iii) Graduate degree in social work or counseling;¶

(iv) Graduate degree in a behavioral science field;¶

(v) Graduate degree in recreational art, or music therapy;¶

(vi) Bachelor's degree in occupational therapist and licensed by the State of Oregon; or¶

(vii) Bachelor's or graduate degree in a relevant area.¶

(F) Documentation on the Department's "Documentation of Disability" form signed by a medical professional. "Medical Professional" means an individual licensed by:¶

(i) The Oregon Medical Board;¶

(ii) The Oregon Board of Naturopathic Medicine;¶

(iii) The Oregon State Board of Nursing as a Nurse Practitioner; or¶

(iv) The State Board of Psychologist Examiners.¶

(2) To the full extent permitted by law, a QRFOFC must make its records available for inspection by the Department, the Office of the Oregon Secretary of State and their officers and representatives.¶

(3) If a QRFOFC, its officers, employees or agents, knowingly make any false, fraudulent or untrue statement or representation in any application, certification or record required or authorized to be created, maintained or submitted under OAR 125, chapter 055, the Department may invoke the procedures authorized by OAR 125-055-0016(6) and (7) to secure appropriate action, including but not limited to requiring the correction or cure of

the violation or the termination of the ~~QRF~~QFOFC's participation in the ~~QRF~~QFO Oregon Forward Program. In determining the sanction, the Department may consider the magnitude, number, and impact of the false statements or representations.

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0020

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0020

Determination of Suitability of Product or Service ¶

(1) The Department will publish and maintain a Procurement List that identifies the products and services of QRF OFCs suitable for procurement by Agencies. No Agency or QRF OFC may enter into or renew a contract under the QRF Oregon Forward Program for products or services not on the Procurement List. QRF OFC products and services determined suitable will remain listed, subject to the Department's examination of the QRF OFC's annual report and compliance with subsection (2). ¶

(2) For a product or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied: ¶

(a) QRF OFC Status. The organization's QRF OFC status must be current. ¶

(b) Ownership. A QRF OFC must own the product or directly provide the service the QRF OFC proposes to provide to Agencies through the QRF Oregon Forward Program. For example, a product or service will not be suitable for procurement by Agencies where the QRF OFC 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 OFC'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 price proposed by the QRF OFC must not be excessive. When proposed pricing is determined by the Department to be excessive, the Department may require the QRF OFC to demonstrate that the proposed pricing is not excessive. ¶

(e) Purpose. The QRF OFC must demonstrate capacity to address the policy of the law as stated in ORS 279.840. To ensure that a QRF OFC achieves this goal, the QRF OFC must disclose to the Department: ¶

(A) The projected employment potential for Individuals with a Disability in connection with the proposed product or service; and ¶

(B) That appreciable value will be added to the products or services by Individuals with a Disability. 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 suitable where the process of the manufacture, assembly or production of the product or the rendition of the service contains or is affected by any procedure, device or artifice under which the work of individuals with disabilities 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 Individuals with a Disability is not a logical element of the chain of production. ¶

(f) Compensation. Individuals with a Disability must be compensated for their work at a rate of pay that is consistent with the applicable legal requirements of the state and federal governments. ¶

(g) Subcontractor Disclosure. Direct labor performed by subcontractors in the manufacture of a product or provision of a service to an Agency must be disclosed in the QRF OFC's direct labor ratios reported to the Department as required by OAR 125-055-0016(1). The QRF OFC must disclose subcontractor utilization, partnerships or planned joint ventures, including: ¶

(A) the portion of the labor to be performed; ¶

(B) the equipment to be used or supplied by; and ¶

(C) the location of work performed by any subcontractor, partner or joint venturer (collectively, "subcontractor"). ¶

(h) Quality Standards and Delivery Schedules. The QRF OFC must demonstrate the capability to meet the applicable specifications and to make the product or service available within the time required by the procuring Agency. ¶

(i) Additional Information. The Department reserves the right to request additional information such as start-up costs and estimated cost recovery, market research conducted by the QRFOFC, and physical location of business space dedicated to the product or service. The Department may conduct on-site investigations of the QRFOFC's work sites and production processes.¶

(3) If the Department determines the product or service satisfies the criteria in subsection (2), it will notify the QRFOFC of its decision. If the Department determines that the product or service does not satisfy the criteria in subsection (2), it will notify the QRFOFC in writing of the criteria not satisfied.¶

(4) The QRFOFC may appeal the decision by submitting a written appeal to the Department within ten (10) calendar days from the date of the Department's notice. The appeal must state the QRFOFC's grounds for appealing the decision. On appeal, if the Department determines the product or service satisfies the criteria of subsection (2), it will notify the QRFOFC of its decision. If on appeal, the Department does not find the product or service satisfies the criteria, it will provide the QRFOFC a written decision stating the reasons for the determination. The Department's written decision under this subsection will constitute a final order under ORS 183.484.¶

(5) The Department will post the suitability determination on the Department's website and e-procurement system for thirty (30) calendar days. A person or entity who will be adversely affected by the listing in its ability to compete for public contracts for the proposed product or service may submit a written protest to the Department before the listing is effective. The protest must describe how the listing will adversely affect the person's or entity's ability to compete for public contracts for the proposed product or service and must demonstrate how the product or service fails to satisfy the criteria stated in subsection (2). The listing will become effective on the thirty-first day.¶

(6) If the Department receives a written protest concerning the proposed listing, the Department will consider the protest and issue a written response to the protesting party. The Department will only consider protests made in writing and received before the close of business on the thirtieth day. In considering a timely protest, the Department may request further information from the protesting party and the QRFOFC.¶

(a) The Department's response to the protest will confirm, modify, or withdraw the proposed listing of the product or service. The Department will make its written determination available, by mail or by electronic means, to the protesting party and to the QRFOFC.¶

(b) A protesting party or QRFOFC who is adversely affected or aggrieved by the Department's response under this subsection may request that the Department institute contested case proceedings under ORS 183.411 to 183.470. A written request for a contested case must be received by the Department within fourteen (14) calendar days of the date of the Department's response. The request for a contested case must describe how the requesting party is adversely affected or aggrieved by the response and how the Department erred in its decision. The Department may grant or deny the request. If the Department grants the request, the contested case will be limited to the issues raised before the Department in the protest.¶

(7) At any time during the suitability determination process, the Department, QRFOFC and protesting party may agree to informal dispute resolution measures such as non-binding arbitration or mediation in addition to the appeal procedures prescribed by subsections (4) through (6).¶

(8) Existing Contractor. The placement of a product or service on the Procurement List will not operate to displace a contractor under an existing contract with an Agency.¶

(9) Amending an Existing Suitability Determination. The QRFOFC may submit a written request to the Department for modification of an existing suitability determination. The request must satisfy the criteria in subsection (2).¶

(a) If the Department determines the information provided by the QRFOFC satisfies the criteria in subsection (2), it will record an amendment to the existing suitability determination. The Department will follow the posting requirements of subsection (5).¶

(b) If the Department determines the information provided by the QRFOFC does not satisfy the criteria of subsection (2), it will send notice to the QRFOFC. The QRFOFC may appeal the Department's decision under the process described in subsections (4) and (7).

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0025

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0025

Review of Suitability Determinations ¶

(1) The Department reserves the right to review suitability determinations as changes in rules, laws, market conditions and ~~QRF~~OFC contractor performance occur. Information that was not available to the Department during the initial determination that negatively impacts the suitability of the product or service may also cause a review. The review may result in removal of the product or service from the Procurement List. A ~~QRF~~OFC may appeal a decision to remove a product or service from the Procurement List in the manner provided in OAR 125-055-0020(4).¶

(2) An Agency and a ~~QRF~~OFC may not alter the character or scope of the product or service so that it no longer is essentially the same product or service that was the subject of the suitability determination. In cases where such a change is sought, the Agency or the ~~QRF~~OFC must first request and receive from the Department a new or amended determination that the product or service, as changed, is suitable under OAR 125-055-0020(2). 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 Department also may conduct a new Price determination in response to the request.

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0030

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0030

Determination of Price ¶

- (1) Under ORS 279.845(1)(a), the Department will determine the Price of QRF Oregon Forward products and services placed on the Procurement List.¶
- (2) The Price determined by the Department will be a reasonable and adequate Price that will recover for the QRF OFC the cost of:¶
 - (a) Raw materials;¶
 - (b) Labor;¶
 - (c) Overhead that can be allocated 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 125-055-0035;¶
 - (d) Delivery costs, which include the transportation of a product to the site designated by the Agency or the transportation of workers to and from a site at which they will perform services for a customer; and¶
 - (e) An amount held in reserve for inventory and equipment replacement.¶
- (3) The QRF OFC must submit its proposed Price to the Department based on the volume or scope of the work and specifications acceptable to the Agency. The Department reserves the right to review and amend a Price determination in light of reductions in or additions to the number of Agencies served under a multiple agency contract.¶
 - (a) In submitting its proposed Price, the QRF OFC must make full disclosure of known costs. The disclosure must include documentation on a form prescribed by the Department. The Department may require additional information. The disclosed costs must reflect a Price that will permit the QRF OFC to recover the amounts prescribed in subsection (2) and ORS 279.845(1)(a).¶
 - (b) If the QRF OFC 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 OFC and the Agency must present the proposed contract (including the agreed Price) to the Department 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 OFC under subsection (3), the Department will determine a Price for the products or services offered under the proposed contract. Based on the disclosed costs, the Department will determine a Price to be reasonable and adequate to permit the QRF OFC to recover the amounts prescribed in subsection (2). The Department will notify the QRF OFC and the Agency of the Price.¶
- (5) In determining a reasonable and adequate Price of a product or service, the Department may consider:¶
 - (a) Prices of similar products or services purchased in comparable quantities by federal agencies under the Javits-Wagner-O'Day Act, 41 USC 46 to 48c;¶
 - (b) Prices of products or services of similar specifications and quantities previously purchased by 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; and¶
 - (d) Prices of products or services of similar specifications and quantities purchased by Agencies from other QRF OFCs.¶
- (6) QRF OFCs and Agencies may not execute or implement any contract under the QRF Oregon Forward Program until the Department has transmitted its notice of the Price determination.¶
- (7) Re-determination of Price. The Department may re-determine a Price at the request of a QRF OFC, an

Agency or at the discretion of the Department. Until the Department approves a new Price, the QRFOFC must continue to provide the service or product at the existing Price. The Agency may not pay or agree to pay the QRFOFC any amount other than the Price approved by the Department. The Department reserves the right to suspend the Price and set an interim Price. This re-determination 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 Department may consider the factors in subsections (2) and (3). The Department 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 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 re-determination is based on changes in QRFOFC cost factors, the QRFOFC must submit to the Department and the Agency a request for a Price change showing a breakdown of cost changes with appropriate documentation, as requested by the Department or Agency.¶

(c) Agencies and QRFOFCs may not make material changes to the specifications of a contract entered into under the QRFOregon Forward Program unless the changes are in writing and have been submitted to the Department for a re-determination of Price.¶

(d) The Agency and QRFOFC, in order to assist the Department in Price re-determinations, must submit to the Department the specific changes in the scope of work or other conditions which will be required during the contract period.¶

(e) The QRFOFC must submit a Price recommendation to the Agency and the Department for review and re-determination of Price as described in subsection (3).

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279.015(1)(b), 279.835 - 279.855

AMEND: 125-055-0035

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0035

Direct Labor Audits ¶

(1) If a QRFn OFC's gross revenues generated under the QRF Oregon Forward Program exceed \$100,000 annually, the QRFOFC must conduct an independent audit of direct labor to maintain qualifications and listing on the Procurement List. Independent audits must be conducted every other year as scheduled by the Department to determine compliance with ORS 279.835(5)(c). The audit must be conducted by an independent certified public accountant (CPA) in accordance with generally accepted auditing principles. The QRFOFC must submit a letter of attestation and the compilation worksheet to the Department 120 calendar days after the close of the QRFOFC's fiscal year. A QRFn OFC may request an extension in writing prior to the 120-day deadline. The request must state the reason for the extension and the anticipated date of submission.¶

(2) For purposes of subsection (3):¶

(a) "Direct labor" means all work required for the manufacture, preparation, processing and packing of products produced by a QRFn OFC and all work performed in rendition of services by a QRFn OFC. Direct labor does not include supervision, administration, shipping, or client-type services provided by a QRFn OFC to Individuals with a Disability served by the QRFOFC, 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 QRFn OFC that include acquisition of equipment, 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 and from the site at which they will perform services for a customer.¶

(3) The examination and resulting 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 QRFOFC's fiscal year, including those products and services procured by Agencies under the QRF Oregon Forward Program and those procured outside the QRF Oregon Forward Program;¶

(b) A list of all individuals covered by the audit scope employed by the QRFOFC that are Individuals with a Disability who provided direct labor 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 QRFOFC, whether paid or unpaid, who are not Individuals with a Disability and 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 performed by the QRFOFC during the fiscal year;¶

(e) Payroll reports for all individuals covered by the audit scope employed by the QRFOFC during the fiscal year, including employee name, work hours paid, 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 of goods or provision of services;¶

(g) The QRFOFC must have documentation of disability on file for each employee who is claimed to be an Individual with a Disability. The acceptable forms of disability documentation are defined in OAR 125-055-

0017(1)(b); and¶

(h) A Competitive Employment statement must be on file for each employee who is claimed to be an Individual with a Disability, except as described in OAR 125-055-0017(1).¶

(4) The audit report must address the following elements:¶

(a) A determination whether the QRFOFC'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 the assessment of direct hours worked by employees with disabilities, as well as by employees without disabilities;¶

(b) If the CPA finds the records to be sufficiently complete and reliable, the CPA must test the QRFOFC's calculations of total direct labor hours worked by employees with disabilities for the entire applicable fiscal year. Only direct labor hours worked may be included in the calculations. Vacation, sick leave, holiday, training hours and any other hours paid but not worked by the employee must be excluded from the calculation;¶

(c) The CPA must apply sufficient statistical sampling techniques to obtain an 80 percent level of confidence that:¶

(A) The direct labor by Individuals with a Disability during the QRFOFC's fiscal year satisfied the ~~75 percent~~ direct labor requirement under ORS 279.835(5)(c); and¶

(B) The hours reported as worked by Individuals with a Disability were worked by individuals whose disabilities were documented under subsection (3)(g) of this rule.¶

(d) A determination whether adequate actions have been taken to resolve any prior adverse audit report findings or recommendations; and¶

(e) The CPA that conducted the direct labor audit must sign an attestation that the QRFOFC complied or did not comply with the 75 percent direct labor requirement of ORS 279.835(5)(c) during the applicable fiscal year. If the CPA attests that the QRFOFC did not comply with the requirement of ORS 279.835(5)(c), the report must include a concise description of the nature and extent of the noncompliance.¶

(5) The letter of attestation must be signed and dated by the CPA and by an officer of the QRFOFC's board of directors.¶

(6) Failure to comply with the requirements of ORS 279.835(5)(c) by a QRFn OFC constitutes sufficient grounds to terminate the QRFOFC's participation in the QRFOregon Forward Program and constitutes sufficient grounds for an Agency to terminate, or to suspend performance of the work under, a contract with the QRFOFC.¶

(7) The cost of the audit required by this rule is an overhead expense that the QRFOFC may recover and which must be taken into account in determining the Price under OAR 125-055-0030.¶

(8) If the Department determines that a QRFn OFC is in material noncompliance with any requirement imposed on it by this rule, including the direct labor requirement of ORS 279.835(5)(c), the Department will issue to the non-complying QRFOFC a written notice to cure the noncompliance. The written notice will state the reasons that the QRFOFC is not in compliance and provide potential remedies.¶

(a) A QRFn OFC receiving notice of noncompliance under this subsection must respond to the Department within thirty (30) calendar days of the date of the Department's notice. The QRFOFC's response must acknowledge receipt of the notice and describe a corrective action plan.¶

(b) If the QRFOFC does not submit a written response within thirty (30) calendar days from the date of the written notice or such additional time as may be permitted by the Department, the Department may issue, to the QRFOFC, written notice of the proposed termination of participation in the QRFOFC Program.¶

(c) The Department reserves the right to require a QRFn OFC to submit to the Department quarterly audit reports concerning the QRFOFC's compliance with the direct labor requirement of ORS 279.835(5)(c). The Department may require, at its discretion, that the quarterly audits be conducted and reported by a CPA in accordance with subsection (5). If a QRFn OFC subject to this requirement satisfies the direct labor requirement in the first two consecutive quarterly audits, the Department may waive the quarterly audit requirement for that QRFOFC.¶

(d) If the QRFOFC fails to achieve compliance within the time prescribed in the Department's written notice, the Department may terminate the QRFOFC's participation in the QRFOregon Forward Program. The Department

will issue to the QRFOFC a written notice of termination.¶

(e) After termination of QRFOFC status, the QRFOFC may not enter into or renew any contracts under the QRFOFC Program. Termination of the QRFOFC's participation in the QRFOregon Forward Program constitutes sufficient grounds for any Agency to terminate any contract with the QRFOFC.¶

(f) One year after the effective date of termination of QRFOFC status, a CRP may re-apply for QRFOFC status under OAR 125-055-0015 and listing on the Procurement List under OAR 125-055-0020.¶

(9) If a QRFOFC fails the direct labor requirement of ORS 279.835(5)(c), that QRFOFC will be required to submit an independent audit report the following year. If the subsequent annual audit discloses that the QRFOFC failed to satisfy the direct labor requirement, the Department will issue a notice of termination to the QRFOFC.¶

(10) The QRFOFC may submit a written appeal to the Department within ten (10) calendar days from the date of the notice of termination issued under subsection (8)(d). The appeal must state the QRFOFC's grounds for appealing the decision. If the QRFOFC does not appeal the Department's decision, termination of participation in the QRFOregon Forward Program is final.¶

(11) On appeal, if the Department determines that the QRFOFC complied with the direct labor requirement of ORS 279.835(5)(c), it will notify the QRFOFC of its decision. If on appeal, the Department determines that the QRFOFC failed to comply with the direct labor requirement of ORS 279.835(5)(c), it will provide the QRFOFC a written decision stating the reasons for the determination. The Department's written decision under this subsection constitutes a final order under ORS 183.484.

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0037

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0037

QRFOFC Contract Termination and Successor Contractor Requirements

(1) If an Agency, or a QRFnOFC terminates, or for any reason does not renew a QRFOregon Forward Contract, for the same janitorial, grounds maintenance or security services, and a new Contract will be put into place to replace or substantially replace the former contract, the Agency must make and document its good faith effort to determine the capability and interest of any other QRFOFC providers suitable for providing the specific service required. A replacement Contract for janitorial, grounds maintenance or security services shall be considered a successor Contract when:-¶

(a) the services to be provided under the replacement Contract will meet the same definition of one of the three categories of services (defined below) as that of the services provided under the former Contract; and-¶

(b) the same Agency that was a party to the former Contract will be a party to the succeeding Contract.-¶

(c) The definitions of the categories of services include:¶

(A) Janitorial Services means duties that are performed to maintain the cleanliness of a facility.¶

(B) Grounds Maintenance Services means activities necessary for the upkeep of lands for appearance, safety and to promote the healthy growth of desired plants.¶

(C) Security Services means activities to protect an Agency's assets and personnel from a variety of hazards by employing preventative measures.¶

(2) For the purposes of this section (1), an Agency may not cease to constitute the same Agency by resorting to a superficial name change or artificial reorganization to evade the requirements of ORS 279.853(1) or of this rule.-¶

(3) When a QRFnOFC is identified as able to meet the previously contracted requirements of the Agency, a new Contract with the successor QRFOFC Contractor shall mandate that the successor Contractor offer employment to the Individuals with Disabilities employed, at the time of the Contract termination or nonrenewal for 28 hours per week or more, to perform the terminated or non-renewed services Contract. Employment must be offered in good faith and without subterfuge or artificial impediments to the hiring of the individuals displaced by the end of the Contract.-¶

(4) When the successor Contractor is a QRFOregon Forward provider, Individuals with Disabilities, employed; at the time of the Contract termination or non-renewal for 28 hours per week or more on the Contract, must be offered employment at wages equal to or better than the wages received under the terminated or non-renewed services Contract. Individuals with Disabilities, whose work schedule at the time of the Contract termination or non-renewal is 28 hours per week or more on the Contract, must also be offered health benefits at least as beneficial to the individual as earned by the individual under the terminated or non-renewed services Contract.¶

(5) When the Agency determines and is able to document that there is not a QRFnOFC capable of performing the Contract, the Agency must contractually require the non-QRFOregon Forward successor Contractor to offer employment to all of the employees working 28 hours per week or more on the Contract, at the time of the Contract termination or non-renewal, excluding supervisory and managerial personnel, regardless of their disability status. The wages offered by the successor Contractor must be equal to or better than the wages received under the terminated or non-renewed services Contract and the health benefits offered by the successor Contractor must be at least as beneficial to the individual as earned by the individual under the terminated or non-renewed services Contract.¶

(6) The original QRFOregon Forward Contractor shall cooperate with the successor Contractor to facilitate a smooth transition for employees choosing to accept the employment offer of the successor Contractor.¶

(7) The successor Contract shall require the successor Contractor, for a period of 90 days after entering into the successor Contract, to offer employment to all employees transitioning from the QRFOFC provider to the successor Contractor, regardless of QRFOFC status. The successor Contractor may subject individuals to that

company's established hiring procedures and may require the individuals to complete a probationary period to demonstrate that they meet the qualifications the successor Contractor applies to new hires.

Statutory/Other Authority: ORS 184.340, 279.845(1)

Statutes/Other Implemented: ORS 279A.025(4), 279.835-279.855, SB494 (2019)

AMEND: 125-055-0040

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0040

General Provisions ¶¶

(1) Contracting Authority. The Department and other Agencies must contract directly with a QRFn OFC for a Contract to qualify for the exception from the competitive procurement requirement in ORS 279A.025 for Contracts under the QRF Oregon Forward Program. Contracts between multiple Agencies and a QRFn OFC satisfy this requirement that the Agencies must contract directly with a QRFn OFC. ¶¶

(2) Contract Disputes. Contract performance issues and disputes arising out of Contracts entered into under the QRF Oregon Forward Program, such as disputes concerning timely delivery of products or performance of services or compliance with specifications, must be resolved exclusively between the QRF OFC and the Agency that is a party to the Contract, and will not be resolved by the Department (except where the Department is a party to the Contract with the QRF OFC). ¶¶

(3) Temporary Services for State Agencies. In each Contract for the provision of temporary services entered into by a state agency under the QRF Oregon Forward Program, the QRF OFC must monitor the prior and current work assignments of its employees who work under the Contract to ensure that no employee performs services for the state in excess of a total of 1,040 hours in a 12-month period. A QRFn Oregon Forward temporary service provider must obtain a written statement from the employee attesting to the total hours worked as a temporary employee for any state agency during the last 12 months. A state agency filling behind an employee on approved leave may continue beyond 1,040 hours in a 12-month period only when the temporary employee replaces a single employee on approved leave. The temporary appointment may not exceed the period of the approved leave. ¶¶

(4) Competitive Public Contract Bidding by a QRFn OFC. If a QRFn OFC submits, to any Agency, a competitive bid, proposal, quote or other offer in a competitive procurement for a public Contract that is not subject to ORS 279.850(1)(c), then regardless of whether the offer was accepted, that QRF OFC may not, at any time during the initial term of the Contract for which the QRF OFC submitted a competitive offer, make any claim to the Agency that instituted the procurement for the Contract that the product or service that was the subject of the offer should have been subject to the requirements of the QRF Oregon Forward Program. ¶¶

(5) Selecting a QRFn Oregon Forward Provider. If only one QRF OFC provider has been deemed suitable by DAS to provide a needed product or service, the Agency must contract with that provider. In cases where more than one QRF Oregon Forward OFC provider has been determined suitable for an Agency's needs, an Agency may choose one of several methods to select a QRFn Oregon Forward provider. ¶¶

(a) An Agency with knowledge of a QRFn OFC's performance, reputation or other factors, and a desire to contract with that QRF Oregon Forward provider, may enter into a Contract with the selected QRF OFC, subject to DAS price determination without a competitive solicitation process. Agencies are encouraged to retain successful QRF Oregon Forward providers whenever possible to support the purpose of the program described in ORS 279.840 and to avoid disrupting employment of Individuals with Disabilities. ¶¶

(b) An Agency may conduct a competitive procurement for a product or service between or among two or more QRF OFCs under ORS 279.850(1)(c). The Agency may grant comparative evaluation points, percentages, or values in conducting the substantial equivalent of a request-for-proposals competition. Since the Price Determination is made by DAS after a QRFn OFC has been selected and after scope, specifications, terms and conditions have been negotiated between Agency and the chosen QRF OFC, price may not be considered in the evaluation process as a QRFn OFC is not able to bind itself to any set Price due to the Price determination requirement under ORS 279.850(1) and OAR 125-055-0030(6). Evaluative factors that may be considered include: ¶¶

(A) References from past or current customers; ¶¶

- (B) Experience fulfilling similar Contracts;¶
- (C) Equipment and other resources as may be used to fulfill the statement of work;¶
- (D) Wages, health care benefits, alternative dispute resolution services, and pension or other retirement arrangements that are better, in the aggregate, than the average wages, health care benefits, alternative dispute resolution services, and pension or other retirement arrangements that private employers provide to employees performing the same or similar job duties in the relevant industry in the county in which the selected QRFOFC will deliver the products or perform the services. The value for any criteria related to compliance with all applicable local ordinances and resolutions that govern labor standards, and wages, health care, etc., may not exceed fifteen (15) percent of the total available criteria being considered for this competitive procurement process.¶
- (E) Quality assurance procedures, systems, communication and other written plans for fulfilling the statement of work.¶
- (6) An Agency may, under ORS 279.850(2)(b), disqualify a QRFOFC from entering into a QRFOregon Forward agreement with the Agency after providing the QRFOFC notice and a reasonable opportunity to be heard in accordance with subsections (a) and (b) of this section.¶
 - (a) The Agency must provide the QRFOFC written notice of a proposed disqualification. The Agency shall deliver the notice by personal service or by registered or certified mail, return receipt requested. The notice must:¶
 - (A) State that the Agency intends to disqualify or suspend the QRFOFC under ORS 279.850;¶
 - (B) State the reasons for the proposed disqualification;¶
 - (C) Include a statement of the QRFOFC's right to a hearing if requested in writing within the time stated in the notice and that if the Agency does not receive the QRFOFC's written request for a hearing within the time stated, the QRFOFC will have waived its right to a hearing;¶
 - (D) Include a statement of the authority under which the hearing will be held;¶
 - (E) Include a reference to the particular sections of the statutes, rules, and Contract provisions involved;¶
 - (F) State the proposed disqualification period; and¶
 - (G) State that the QRFOFC may be represented by legal counsel.¶
 - (b) Hearing. The Agency shall schedule a hearing in response to the Agency's receipt of the QRFOFC's timely hearing request. Within a reasonable time prior to the hearing, the Agency must notify the QRFOFC of the time and place of the hearing and provide information on the procedures, right of representation, and other rights related to the conduct of the hearing.¶
 - (c) Notice of Decision. The Agency must provide written notice of the disqualification determination to the QRFOFC. The Agency shall deliver the notice by personal service or by registered or certified mail, return receipt requested. The notice must contain:¶
 - (A) The effective date and period of the disqualification;¶
 - (B) The grounds for the disqualification; and¶
 - (C) A statement of any QRFOFC appeal rights and applicable appeal deadlines.¶
- (7) For the purposes of ORS 279.850, a record of "repeatedly violating" local ordinances or resolutions that govern labor standards means reliable documentation, supported by substantial evidence, that the QRFOFC violated applicable ordinances or resolutions more than two times within the requisite period. The requisite period under this section either is: (i) within the then-current term of the QRFOFC's agreement with Agency; or (ii) within the previous three years.¶
- (8) For the purposes of ORS 279.850, local ordinances or resolutions that govern labor standards means ordinances or resolutions, duly adopted by a local government body (as defined in ORS 174.116), that regulate employee working conditions. Working conditions consist of employee:¶
 - (a) Wage rates or salaries;¶
 - (b) Hours of labor, work days, leave, and workplace safety conditions;¶
 - (c) Health insurance or health care benefits;¶
 - (d) Retirement or pension benefits; and¶
 - (e) Dispute resolution procedures.¶
- (9) A QRFOFC must not enter into a public Contract with an Agency under the QRFOregon Forward Program

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 will be those exclusively of the ~~QRFOFC~~ and Agency.¶

(10) The Department reserves the right to extend any deadline or time within which a ~~QRFOFC~~ 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 Department 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 emergencies that reasonably can be regarded as imposing an obstacle to the ~~QRFOFC~~'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 individual or 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 an individual's 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 Department official specifically delegated that task. The Department 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.

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855

AMEND: 125-055-0045

RULE SUMMARY: Implementing HB 494 (2019) and changing the name of what has been known as the Qualified Rehabilitation Facilities (QRF) Program to Oregon Forward.

CHANGES TO RULE:

125-055-0045

Purchases under ORS 279.855 ¶¶

(1) QRFOFCs, 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 279A.040, are not subject to the requirement that the Department provide for their acquisition of such items. Accordingly, QRFOFCs, residential programs and public benefit corporations must enter into an agreement with the Department in order to participate in the Oregon Cooperative Procurement Program (ORCPP). The agreement must have substantially the same form, content and obligations as the standard agreement prescribed by the Department that state agencies must execute in order to participate. In addition, QRFOFCs, 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) QRFOFCs that currently are approved under OAR 125-055-0015 may purchase equipment, materials, supplies and services through the Department in the same manner as state agencies, as provided in ORS 279A.140 to 279A.155 and 279A.250 to 279A.290.¶¶

(3) A residential program seeking to purchase equipment, materials, supplies or services through the Department under ORS 279.855 must make a written request to the Department 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 Department under ORS 279.855 must make a written request to the Department to which is attached:¶¶

(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;¶¶

(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 subsection (4)(c), 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 subsection (4)(c);¶¶

(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 Department nor the State of Oregon will be liable for any obligation or debt entered into on behalf of a QRFOFC, a residential program or a public benefit corporation, and likewise will not be liable for any obligation or debt incurred by a QRFOFC, a residential program or a public benefit corporation, in making purchases.¶

(6) Each residential program and public benefit corporation that makes any purchase of equipment, materials, supplies or services through the Department under ORS 279.855 must notify the Department 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.

Statutory/Other Authority: ORS 279.845(1), 184.340

Statutes/Other Implemented: ORS 279A.025(4), 279.835 - 279.855