**DEPARTMENT OF ADMINISTRATIVE SERVICES**

**DIVISION 247**

**PUBLIC PROCUREMENT OF SUPPLIES AND SERVICES**

**125-247-0010**

**Policies**

(1) ORS Chapter 279B and this Division 247 apply the policies of ORS 279A.015 to the Procurement of Supplies and Services. The seven sourcing methods for procurement, procedures, and legal remedies set forth in ORS Chapter 279B and these Rules simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards. ORS Chapter 279B and this Division 247 provide a Public Contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, according to ORS 279A.015(6).

(2) Specific procedures accompany each method, followed by a Section of general procedures. Authorized Agencies must comply with both the specific procedures of a method and general procedures.

(3) The responsibility of the Designated Procurement Officer and any delegatee of an Authorized Agency is to choose the appropriate sourcing methods in accordance with the Code, Rules, and policy, and arrive at offers that represent optimal value to the Agency and the State.

(4) Meaningful competition can be achieved through various strategies and sourcing methods when procuring Supplies and Services, and this competition must be reasonably calculated and demonstrated to satisfy the Authorized Agency’s and the State’s needs.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.010
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

**COMMENTARY ON OAR 125-247-0010: Revised July 1, 2008**

**Strategic Sourcing.** The following tasks and principles represent best procurement practices and are applicable to many purchases. Depending upon the context and the needs of the State, the Department uses best practices, including, but not limited to:

(a) Collect and compile information collection and compilation for planning and Negotiation:

(A) Estimate what the State will spend in the upcoming fiscal year,

(B) Tailor Specifications and service requirements to end-users,

(C) Develop savings targets,

(D) Create the best terms and conditions for each of the Supplies and Services, and

(E) Research the markets for Contracts within each category.

(b) Market making to increase the options and improve Negotiation:

(A) Identify new Providers prior to commencing the Solicitations,

(B) Use potential Requests for Information to identify Providers, as needed, and

(C) Choose the procurement method that is best suited for the category.

(D) Analyze switching costs and all elements of cost associated with the award to any potential Offeror.

(c) The development and conduct of Solicitations for Offers, if selected:

(A) Use the Competitive Sealed Bidding or Proposals method as needed,

(B) Develop quantitative and qualitative criteria for evaluating Offers,

(C) Hold pre-Offer conferences with Providers, when appropriate, and

(D) Conduct the Solicitations, using the methods of the Code and Rules.

(d) Strategies for Negotiations after the first round of Offers, if selected:

(A) Ensure full visibility into the competitiveness of Offers,

(B) Analyze the Offers and decide subsequent strategies, and

(C) Conduct multiple rounds of Negotiations, if needed.

(e) Contract awards and implementation plans:

(A) Review the best award scenario with items weighted for each category,

(B) Use template Contracts for each category to capture all negotiated terms,

(C) Develop an administrative plan for each category for the future,

(D) Develop a tract implementation plan and communication plan to install a new Contract or Price Agreement that effectively supports users,

(E) Develop a Contract Administration plan to effectively administer and manage the Contract to optimize savings and meet user needs throughout the life of the Contract,

(F) Track and report savings achieved from the Contract,

(G) Monitor contract usage and report usage and maverick spending, and

(H) Review ongoing recommendations for procurement changes.

**125-247-0100**

**Applicability**

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 247 apply to Public Contracting for Supplies and Services. In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 247 take precedence over the more general requirements of the Rules in Division 246.

(2) The Rules implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 247 of the Rules specifically addresses matters covered in ORS Chapter 279B.

(3) For purposes of these Division 247 Rules, the Department adopts the following Model Public Contract Rules, as revised and effective January 1, 2016:

OAR 137-047-0255, 137-047-0257, 137-047-0260, 137-047-0261, 137-047-0265, 137-047-0270, 137-047-0310, 137-047-0320, 137-047-0400, 137-047-0410, 137-047-0420, 137-047-0440, 137-047-0450, 137-047-0460, 137-047-0470, 137-047-0480, 137-047-0490, 137-047-0525, 137-047-0575, 137-047-0620, 137-047-0640, 137-047-0650, 137-047-0660, 137-047-0670, 137-047-0700, 137-047-0710, 137-047-0720, 137-047-0745, 137-047-0740, 137-047-0750, 137-047-0760, 137-047-0800, 137-047-0810.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.015
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

**125-247-0110**

**Feasibility Determination, Cost Analysis and Department Report**

(1) The Table of Contents for this Rule is as follows:

(a) Section 2: Generally

(b) Section 3: Feasibility Determination

(c) Section 4: Cost Analysis: Estimation of Agency and Contractor Data

(d) Section 5: Decision: Comparison of Compensation and Other Costs

(e) Section 6: Decision: Comparison of Agency and Contracting Costs

(f) Section 7: Department Evaluation and Report

(2) **Generally**.

(a) Before conducting a Procurement for Services, a State Contracting Agency, as defined in ORS 279A.010, (for purposes of this Rule, Agency) must, in the absence of a Feasibility Determination under Section (3) of this Rule, conduct a Written Cost Analysis under sections (4) through (6) of this rule (Cost Analysis).

(b) **Responsibilities for the Conduct of the Cost Analysis**.

(A) An Agency with procurement authority must conduct the Cost Analysis for its Agency-specific Procurements;

(B) An Agency without procurement authority must conduct the Cost Analysis for its Agency-specific Procurements to be procured by the Department;

(C) At the Department’s request, an Agency must contribute to the Cost Analysis for statewide Price Agreement Procurements; and

(D) The Department must conduct the Cost Analysis for statewide Price Agreement Procurements and Department-specific Procurements.

(c) This Rule applies to a Procurement for Services that the Agency estimates will result in one or more Contracts with a value that exceeds $250,000 for the estimated term of the Contract(s) (Value), including incidental costs related to the Services, and Amendments. Agencies must not fragment to avoid this threshold (see OAR 125-246-0630).

(d) If a Procurement is conducted in accordance with this Rule, an Award is made, and one or more Amendments then increase the estimated contract’s value over $250,000, a Cost Analysis is not required at that time.

(e) “**Services**” has the meaning as defined in OAR 125-246-0110, except that for purposes of this Rule only:

(A) “Services” does not include the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100 as defined in ORS 279C.100; and

(B) “Services” does not include Client Services, defined in OAR 125-246-0110, as follows:

(i) “**Client**” means any individual, family or Provider:

(I) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof (“Services and Incidental Supplies”), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(II) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(III) Who is under the custody, care, or both of the Agency; or

(IV) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(ii) "**Client Services**" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(I) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(II) Sustenance, including clothing;

(III) Employment training or Skills training to improve employability;

(IV) Services for people with disabilities;

(V) Foster care or foster care facilities;

(VI) Residential care or residential care facilities;

(VII) Community housing;

(VIII) In-home care including home delivered meals;

(IX) Medical care, services and treatment, including but not limited to:

(IX-a) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(IX-b) Alcohol and drug treatment;

(IX-c) Smoking cessation;

(IX-d) Drugs, prescriptions and non-prescription;

(IX-e) Nursing services and facilities;

(X) Transportation or relocation;

(XI) Quality of life, living skills training;

(XII) Personal care;

(XIV) Legal services and expert witnesses services;

(XV) Religious practices, traditions and services, separately or in any combination thereof; and

(XVI) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(3) **Feasibility Determination**. An Agency may proceed with the Procurement of Services without conducting a Cost Analysis if the Agency makes Written findings that one or more of the Special Circumstances described in subsection (3)(b) make the Agency’s use of its own personnel and resources to provide the Services not feasible (Feasibility Determination).

(a) **Approval of Feasibility Determination**.

(A) The Designated Procurement Officer or delegate (DPO) of an Agency must approve the Feasibility Determination for its Procurement;

(B) The DPO of an Agency without authority must approve the Feasibility Determination for an Agency-specific Procurement to be procured by the Department on behalf of that Agency;

(C) The Chief Procurement Officer must approve the Feasibility Determination for a statewide Price Agreement Procurement or Department-specific Procurement. At the Department’s request, DPOs must cooperate with the Department to prepare the findings for the Feasibility Determination for a statewide Price Agreement Procurement.

(b) **Special Circumstances**. Special Circumstances include any circumstances, conditions or occurrences that would make the Services, if performed by the Agency’s employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Agency. Special Circumstances may include, but are not limited to, the follow circumstances:

(A) **Expertise**. The DPO approves a determination that the Agency lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the finding, the Agency must compare the Agency's capability, experience or expertise in the field most closely involved in performing the Services with a potential contractor's capability, experience or expertise in the same or a similar field.

(B) **Funding Requirement**. The terms under which the Agency receives a grant or other funds for use in a Procurement require the Agency to obtain Services through an independent contractor;

(C) **Law Requirement**. Other state or federal law requires the Agency to procure Services through an independent contractor;

(D) **Real or Personal Property**. The Procurement is for Services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(E) **Conflict of Interest; Unbiased Review**. The Agency cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the Agency's existing personnel or persons the Agency could hire through a regular or ordinary process would not be suitable;

(F) **Emergency Procurement**. The Procurement is for Services to which the provisions of ORS 279B.080 apply;

(G) **Delay**. The Procurement is for Services, the need for which is so urgent, temporary or occasional that attempting to perform the Services with the Agency's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the Services; and

(H) **Services Completed within Six Months**. The Services that the Agency intends to procure will be completed within six months after the date on which the contract for the Services is executed.

(c) **Procurement File**. All written determinations required in this section (3) must be made a part of the Procurement File in accordance with OAR 125-246-0556.

(4) **Cost Analysis: Estimation of Agency and Contractor Data**.

(a) **Costs of Using Agency’s Own Personnel and Resources**. The Agency must estimate the Agency's cost of performing the Services and consider cost factors that include:

(A) **Salaries or Wages and Benefits**. The salary or wage and benefit costs for the employees of the Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision or monitoring of the performance of the Services.

(B) Material Costs. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) **Related Costs**.

(i) Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(ii) Any costs related to stopping and dismantling a project or operation because the Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(iii) The miscellaneous costs related to performing the Services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection (4)(a) over the expected duration of the Procurement. These costs exclude the Agency's indirect overhead costs for existing salaries or wages and benefits for administrators and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Agency performed the Services.

(D) **Other Information**. The Agency’s costs described in this subsection (4)(a)(A) do not constitute an exclusive list of cost information. An Agency may consider other reliable information that bears on the cost to the Agency of performing the Services. For example, if the Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, in a relatively recent Services project, the Agency may consider those actual costs in making its estimate.

(b) **Costs a Potential Contractor Would Incur**. The Agency must estimate the cost a potential Contractor would incur in performing the Services and consider cost factors that include:

(A) **Salaries or Wages and Benefits**. The estimated salary or wage and benefit costs for a potential Contractor and potential Contractor’s employees who work in the business or industry most closely involved in performing the Services; and who would be necessary and directly involved in performing the Services or who would inspect, supervise, or monitor the performance of the Services.

(i) The Agency may, but is not required to, communicate with any actual Contractor for information related to this estimate (see OAR 125-246-0635).

(ii) The Agency may consider in making this estimate any public source of information, including but not limited to:

(I) Other Contracts of the Agency or another Agency for reasonably comparable services;

(II) Trade or other marketplace websites;

(III) Industry or professional associations and publications;

(IV) The Oregon Bureau of Labor and Industries or an agency of another jurisdiction that performs comparable functions; and

(V) A survey of Persons who provide reasonably comparable services by means including but not limited to Internet or telephone searches.

(B) **Material Costs**. The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) **Related Costs**. The miscellaneous costs related to performing the Services. These miscellaneous costs include but are not limited to reasonably foreseeable fluctuations in the costs listed in subsections (4)(b)(A) through (C) over the expected duration of the Procurement.

(D) **Other Information**. The potential Contractor’s costs described in subsections (4)(b)(A) through (C) do not constitute an exclusive list of cost information. An Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if in the recent past, the Agency conducted a Solicitation that required cost information or permitted negotiation of price based on a cost analysis for Services reasonably comparable to the current Services, the Agency may use that cost information in estimating the costs of current Services.

(5) **Decision: Comparison of Compensation and Other Costs**.

(a) The Agency must compare:

(A) The Agency’s estimated costs under Subsection (4)(a) and

(B) The Contractor’s estimated costs under subsection (4)(b).

(b) **Decision**. If the Agency’s costs exceed the Contractor’s costs under Subsection (5)(a) for the sole reason that the Contractor’s costs for salaries or wages and benefits under Subsection (4)(b)(A) are lower than the Agency’s costs for salaries or wages and benefits under subsection (4)(a)(A), then the Agency may not conduct the Procurement.

(6) **Decision: Comparison of Agency and Contracting Costs**.

(a) If subsection (5)(b) does not apply, the Agency must compare:

(A) The Agency’s estimated costs under Subsection (4)(a) and

(B) The total estimated costs that the Agency would incur in procuring the Services from a Contractor (Contracting Costs).

(b) **Profit Included**. Contracting Costs include the Agency’s estimate of Contractor’s profit in addition to the estimate of Contractor’s costs under subsection (4)(b). If the Agency, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Agency may consider what it actually paid under a Contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to Contracts, Bids or Proposals entered into or received within the five (5) years preceding the date of the cost estimate. The Agency must take into account, when considering the pricing offered in previous Bids, Proposals, or Contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the Services, such as the Consumer Price Indexes.

(c) **Decision**. If the Agency’s Contracting Cost under this section is lower than the Agency’s cost under subsection (4)(a), the Agency may conduct the Procurement. If the Agency’s Contracting Cost is higher than the Agency’s cost under subsection (4)(a), the Agency may not conduct the Procurement, unless the Exception of subsection (6)(d) applies

(d) **Exception Based on Lack of Agency Personnel and Resources; Reporting**. If the Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Agency may still conduct the Procurement if, at the time the Agency intends to conduct the Procurement, the Agency determines that it lacks personnel and resources to perform the Services within the time the Agency requires the Services (Exception). When an Agency conducts a Procurement under this Exception, the Agency must:

(A) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Agency requires the Services and the basis for the Agency’s decision to conduct the Procurement;

(B) Obtain the Written approval by the DPO of the Agency of the Exception before conducting an Agency-specific Procurement or the Written approval by the CPO of the Exception before the Department conducts a Procurement.

(C) Provide to the Emergency Board, each calendar quarter, copies of each Cost Analysis, Exception, and any other records described in this Subsection (6)(d);

(D) Prepare a request to the Governor for an appropriation and authority necessary for the Agency to hire personnel and obtain resources necessary to perform the Services that the Agency procured under this Subsection (6)(d). The request must include a copy of the records that the Agency provided to the Emergency Board under Subsection (6)(d)(C).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.030, 279B.033, 279B.036, Or Laws 2016, ch 16 (SB 1539)

Hist.: DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 4-2016, f. 12-22-16, cert. ef. 1-1-17, f. 12-28-17, cert. ef. 1-1-18

**COMMENTARY ON OAR 125-247-0110**

(1) The process required under this Rule is a pre-Buy Decision. See OAR 125-247-0200 for the Buy Decision. All contracting activities fall under this Rule, including Contracts with Qualified Rehabilitation Facilities.

(2) This Rule does not exempt or replace the collective bargaining agreement’s requirements for feasibility studies over $30,000.

**125-247-0165**

**Practices Regarding Electronic Goods Procurement**

(1) ORS 279B.025 requires the Department to establish procurement practices that ensure, to the maximum extent economically feasible, Procurement of Goods that may be recycled or reused when discarded.

(2) The Department and Authorized Agencies must procure Electronic Goods in a manner that includes consideration of the impact of the electronic goods upon the environment and public health, in addition to consideration of economic and community interests, in accordance with goals of Sustainability pursuant to ORS 184.423. The Department and Authorized Agencies, separately or together, may:

(a) Consult with stakeholders to develop procedures or guidelines for Procurement of Electronic Goods; and

(b) Address policy and procedure decisions including but not limited to: recycling, relationship to Rules for State Surplus Property as set forth in OAR 125-246-0700 through 125-246-0730, Energy Star certifications, promote toxic use reduction, and the use of certain components such as mercury or lead that have detrimental impacts.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**125-247-0170**

**Life Cycle Costing**

(1) **Policy**.

(a) **Analysis**. Life Cycle Costing provides a method of analysis, considering Sustainability and analyzing total cost of ownership as part of the best value of the purchased Goods (Products). The method applies to the development of Life Cycle Costing criteria for a Solicitation, collection of Product information about Life Cycle, evaluation of Offers, selection of Contractor(s), and award of Contract(s). Using this method, Agency does not award a Contract based solely on the lowest price, and a low Bid would include Life Cycle Costing.

(b) **Planning**. Agency must consider using Life Cycle Costing during planning for Competitive Sealed Bidding or Proposals. Life Cycle Costing is optional for other sourcing methods under this Division 247.

(c) **Services Related to the Product**. Agency may also consider the costs of Services related to a Product, including other Sustainability criteria.

(2) **Definitions**:

(a) “**Life Cycle**” means the life cycle of a Product, including conception, design, manufacture, service, and disposal. The design of the Product may allow for a repetitive lifecycle: material extraction, manufacturing/production, transportation, utilization/reuse, and disposal/recycling, which leads to the beginning of a new cycle.

(b) "**Life Cycle Cost**" means the total cost of acquiring, operating, supporting and (if applicable) disposing of the Product being acquired.

(c) "**Life Cycle Costing**" means an analysis method that quantifies Life Cycle Costs, including the costs of acquiring, operating, supporting and disposing of a Product. The method may also include any additional Costs that relate to adverse impacts of a Product, for example, impacts to the environment or public health.

(d) “**Products**” means goods, supplies, equipment, or materials.

(3) **Life Cycle Costs**. Life Cycle Costing considers the acquisition costs of a Product, and includes all associated costs of ownership, such as purchase price, shipping, maintenance and repair, longevity, and disposition costs at the end of life. For complex Products, several Contracts may be required and acquisition costs may involve research and development as well as production, delivery, and installation of the Product. Other costs expected to occur over the anticipated life of the Product may be added to the acquisition costs, based upon a reasonable determination by the Agency. Examples of other typical Life Cycle Costs include the following:

(a) Switching costs associated with changing from the current Product to another model or brand of the Product. Typically, such costs may include: removal, shipping, training, and replacement of peripheral equipment and consumables that support the Product. The Agency may also consider increased project management or additional transition time.

(b) Operating and support costs, including third party contract costs, associated with equipment, supplies, utilities, fuel, and services needed to operate and maintain an operational system.

(c) Disposal costs, including third party contract costs, associated with removing equipment from service and disposing of it. Evaluations that consider Life Cycle Cost should also consider any significant salvage, reuse, or resale value at the time of disposal.

(4) **Solicitation Requirements**. If Life Cycle Costing will be considered and applied, the Solicitation must:

(a) Describe to prospective Offerors how Life Cycle Costing will be considered and applied in the evaluation process and award decision.

(A) If the Agency plans to make an Award based solely on the lowest evaluated cost resulting from Life Cycle Costing, the Solicitation must describe an evaluation process that includes Life Cycle Costing. For example, an Invitation to Bid must include quantifiable total Life Cycle Costs as a part of the bid evaluation methodology and award, and the lowest total Life Cycle Cost would be considered the low Bid.

(B) If the Agency plans to make an Award based on an evaluation of other factors than the lowest cost, the Solicitation for Proposals or Quotes must describe an evaluation process that includes Life Cycle Costing.

For example: (i) A Request for Proposals may include Life Cycle Costs as a part of the total points awarded for costs. All Life Cycle Costs will be calculated, and the lowest total Life Cycle Cost is awarded the maximum points allocated for cost in the Solicitation; or (ii) A Request for Proposals may separate Life Cycle Costs and assign to them a weight or points in addition to other defined costs and non-cost criteria in the evaluation process.

(b) Provide relevant information for the evaluation of the Offer; for example, projected Product usage, operating environment, and operating period.

(c) Describe the information that an Offeror must provide in the Offer, including relevant Life Cycle Costs and supporting information. Examples include:

(A) Average unit price, including production and operational costs,

(B) Delivery, shipping and transportation costs,

(C) Any response to switching costs identified in the Solicitation,

(D) Unit operating and support costs (for example, staffing and technical assistance, energy, parts requirements, scheduled maintenance, and training),

(E) Unit disposal costs (for example, the cost of removing equipment from the State facility),

(F) Unit salvage, reuse, or residual value,

(G) Any information related to testing, demonstrations, or interviews, and

(H) Other Product information related to Life Cycle and Sustainability.

(5) **Solicitation Options**. The Solicitation may:

(a) Provide for adjustments to the Life Cycle Costs if the costs continue over a period of years, for example, inflation or cost uncertainty, and

(b) Include third party estimates of a Product’s Life Cycle.

(6) **Award Decision**. The Agency must evaluate Offers only as set forth in the Solicitation and in accordance with OAR 125-247-0600.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.025, 279B.270 & 279B.280
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**COMMENTARY ON OAR 125-247-0170: Revised January 1, 2014**

(1) This Rule sets out criteria that may be considered by the Agency according to OAR 125-247-0500 (Responsible Bidders and Proposers) to determine the low Bidder or most Advantageous Proposal. The Rule gives the Agency the ability to factor in other costs in addition to price. The Agency must still determine whether the Offeror is responsible according to OAR 125-247-0500.

(2) If a preference is applicable to an Award in accordance with OAR 125-247-0600, then the preference must be applied within this Rule’s Life Cycle Costing award criteria. The Agency may address multiple Awards and Life Cycle Costing through the design of the Solicitation.

**125-247-0185**

**Approval of Information Technology or Telecommunications Procurements**

(1) For any Procurement of Information Technology or Telecommunications with an anticipated Contract Price of $1,000,000.00 or more, a state agency, as defined in ORS 279A.010(1), must obtain prior Written approval from the State Chief Information Officer. In addition, and regardless of the anticipated Contract Price, a state agency, as defined in ORS 279A.010(1), must obtain any review or approval the State Chief Information Officer may require in accordance with ORS 184.477, 279A.050, 279A.075, and 279B.075 (HB 3099) or ORS 279B.030 (SB 1539).

(2) In accordance with OAR 125-247-0110(7), a State Contracting Agency that conducts a cost analysis in accordance with ORS 279B.033 or makes a determination under ORS 279B.036 in connection with a procurement for services related to information technology must provide the State Chief Information Officer and the Legislative Fiscal Office with copies of the final cost analysis the state contracting agency prepared under ORS 279B.033 or the final determination the state contracting agency made under ORS 279B.036. For purposes of this subsection, information technology is defined in ORS 291.045(1) and includes, but is not limited to, all present and future forms of hardware, software, and services for data processing, office automation, and telecommunications.

(3) The requirement to provide the materials described in subsection (2) to the State Chief Information Officer does not apply to the Secretary of State or the State Treasurer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented:ORS 184.477, 279A.050, 279A.075, 279B.030 (SB 1539), 279B.075 (HB 3099)

Hist.: DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16; DAS 4-2016, f. 12-22-16, cert. ef. 1-1-17, f. 12-28-17, cert. ef. 1-1-18; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**125-247-0200**

**Buy Decision and Methods of Source Selection**

(1) **Buy Decision**. The Buy Decision means the decision to buy Supplies and Services through socio-economic programs, agreements, or the open market (Source). Agency is not required to make a Buy Decision based on the lowest price. See the specific law for the authority to use each Source.

(2) **Priority**. Agencies must make their Buy Decision in the priority order set forth in subsections (a) through (d) and in accordance with applicable law (Priority). If a higher Priority Source satisfies a Procurement and law requires the use of that Source, the Agency must procure through that higher Priority Source and may not elect to procure through a lower Priority Source.

(a) **Surplus Property**. Procuring from surplus property promotes the efficient use of existing resources (see OAR 125-050-0100 through 125-050-0400).

(b) **Qualified Rehabilitation Facilities (QRFs)**. Procuring from QRFs assists individuals with disabilities through gainful employment (see ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045).

(c) **Inmate Labor**. See the Oregon Constitution, Article I, Section 41, subsection 11, which encourages the use of inmate work programs.

(d) **Statewide Department Price Agreement**. Economy and efficiency are promoted through volume and strategic purchases. Some Statewide Department Price Agreements are Mandatory Use Contracts, described in OAR 125-247-0296. To determine if a Price Agreement exists and whether it is mandatory, use ORPIN and perform a “Statewide Contract Search” or an “Award Search” for “active” Contracts. Under ORS 279A.140, DAS has the procurement authority to establish and administer statewide Price Agreements, and in accordance with the terms of each Price Agreement, DAS delegates to the Agencies the procurement authority to use these Statewide Department Price Agreements. A statewide Department Price Agreement should clearly state what, if any, threshold limitation applies to the delegated procurement authority to use the Price Agreement. If a Statewide Department Price Agreement is silent or unclear on the threshold limitation on the delegated procurement authority to use the Price Agreement, the Agency’s delegated procurement authority to use the Price Agreement is not to exceed $150,000, unless the Agency has procurement authority greater than $150,000 in a form in accordance with OAR 125-246-0165(4).

(3) **ORS 190 Agreement**. Section (2) does not apply to ORS 190 Agreements that promote the use of existing state resources, including an Interagency Agreement, Intergovernmental Agreement, Interstate Agreement, International Agreement, or Tribal Agreement (see OAR 125-246-0365). An Agency may elect to use an ORS 190 Agreement at any time.

(4) **Open Market**. If sections (2) and (3) do not apply, the Agency may procure Supplies and Services through the open market, using the methods provided under the Public Contracting Code, related Rules, and policies. See ORS 279AB, OAR 125-246 and 247.

(5) **Methods of Source Selection**. An Authorized Agency must award a Contract for Supplies and Services by one of the following seven sourcing methods in accordance with the Code and related Rules:

(a) Competitive Sealed Bidding according to ORS 279B.055;

(b) Competitive Sealed Proposals according to ORS 279B.060;

(c) Small Procurement according to ORS 279B.065;

(d) Intermediate Procurement according to ORS 279B.070;

(e) Sole-Source Procurement according to ORS 279B.075;

(f) Emergency Procurement according to ORS 279B.080; or

(g) Special Procurement according to ORS 279B.085. A Cooperative Procurement in accordance with OAR 125-246-0400 substantially uses a Competitive Sealed Bidding or Competitive Sealed Proposals method.

(6) All State Contracting Agencies must comply with ORS 200.035, any applicable related Governor’s Executive Order regarding Oregon Minority-Owned, Women-Owned, Service-Disabled Veteran Owned, and Emerging Small Businesses, and applicable related Department statewide policy.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**COMMENTARY ON OAR 125-247-0200: Revised January 1, 2015**

**Open Market.** Agencies must use one of the seven sourcing methods described in Section (5) above, unless a sourcing method exemption applies, such as: the allowable federal program exemption sourcing process (see OAR 125-246-0360), or a direct award under the Disabled Veterans preference (see OAR 125-246-0314).

**125-247-0255**

**Competitive Sealed Bidding**

(1) See OAR 137-047-0255 and 137-047-0257.

(2) Regardless of OAR 137-047-0255 and 137-047-0257, Authorized Agencies must comply with the following provisions:

(a) **Options**. An Authorized Agency may use one or more or any combination of the processes described in this Rule.

(b) **Public Notice**. The Authorized Agency must provide public notice of the Competitive Sealed Bidding Solicitation as set forth in OAR 125-247-0305.

(c) **Emerging Small Business**. The Invitation to Bid must include the requirement, if applicable, for the awarded Bidder to obtain or subcontract labor, materials, or labor and materials from a supplier registered as an Emerging Small Business.

(d) **Revised Rounds of Bidding**.

(A) **Process**. Revised Rounds of Bidding means a process that begins with an initial round of Competitive Sealed Bidding according to OAR 125-247-0255 and may, at the discretion of the Authorized Agency, include successive rounds of Bidding in order for the Agency to gain the best Offer for purposes of Award. An Agency may revise the Solicitation's Specifications, terms and conditions, and pricing structure for successive rounds to best meet the State's needs. Bidders must be allowed adequate time to revise and resubmit their Bids in accordance with the requirements set forth in the newly revised Solicitation Document. At each successive round, the Agency may disregard its scoring of prior Bids and commence new scoring for the new Bids. The Agency must comply with the following procedures for this type of Solicitation:

(B) **Revisions**. The Agency may reject any Bid, after any round, because the Bid did not meet a minimum score or minimum set of requirements. The Agency may then proceed with a subsequent round that requires additional Bids to be submitted, based on different Specifications, terms and conditions, pricing structure, scoring model, references and set of award criteria, separately or in any combination thereof, in order to best meet the State's interests (Revisions). If any Revision is made by the Agency in any subsequent round, the Agency has the right, in its sole discretion, to permit any Bidder whose Bid was previously rejected to submit a new Bid, if the reason(s) for the rejection of the prior Bid by that Bidder no longer applies. Following clarifications and additional investigations, the Agency may reinstate or disqualify an Bidder at any stage of the evaluation process.

(C) **Disclosures**. The initial Solicitation Document must disclose that a Revised Rounds of Bidding process will or may be used. The Agency must give notice to all initial Bidders of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and award criteria, separately or in any combination. If the Agency discloses any prices, terms or conditions offered by other Bidders, the Agency must give notice of these disclosures to the initial Bidders.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.055
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0255**

**Competitive Sealed Bidding**

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in OAR 137-047-0300.

(2) Invitation to Bid. In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) General Information.

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

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

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

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

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

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

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, chapter 880, section 5, the Contracting Agency's description of its need to purchase must:

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

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

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Bidding and Evaluation Process.

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

(B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates of actual future costs based on information the Contracting Agency has available concerning future use; and

(C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to OAR 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b).

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

(f) All contractual terms and conditions in the form of Contract provisions the Contracting Agency determines are applicable to the Procurement. As required by Oregon Laws 2009, chapter 880, section 5, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

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

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

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

(3) Good Cause. For the purposes of this rule, “Good Cause” means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

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

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

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

(d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065, OL 2009, ch. 880, sec. 5
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

**137-047-0257**

**Multistep Sealed Bidding**

(1) Generally. A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).

(2) Phased Process. Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.

(3) Public Notice. When a Contracting Agency uses multistep sealed bidding, the Contract Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under OAR 137-047-0430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under OAR 137-047-0720.

(4) Procedures Generally. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.

(5) Procedure for Phase One of Multistep Sealed Bidding.

(a) Form. A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth OAR 137-047-0255(2), the multistep Invitation to Bid must state:

(A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;

(B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(D) The criteria to be used in the evaluation of unpriced submittals;

(b) Evaluation. The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

(6) Procedure for Phase Two of Multistep Sealed Bidding.

(a) After the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

(b) A Contracting Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule or the Invitation to Bid;

(B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

**COMMENTARY ON OAR 125-247-0255:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rules OAR 137-047-0255 and 137-047-0257, and supplemented with Section (2).

**125-247-0260**

**Competitive Sealed Proposals**

(1) See OAR 137-047-0260 and 137-047-0261.

(2) Regardless of OAR 137-047-0260 and 137-047-0261, Authorized Agencies must comply with the following provisions:

(a) An Authorized Agency may use one or more or any combination of the procedures described in ORS 279B.060 and this Rule.

(b) In addition to the requirements in ORS 279B.060(2), the Request for Proposals must include the following:

(A) The form and instructions for submission of Proposals;

(B) A description of the procurement process, including but not limited to: optional process, evaluation, selection, and protest process.

(C) Mandatory preferences, if applicable, and any discretionary preferences, if elected; and

(D) All applicable certifications of compliance with tax laws.

(c) **Interviews**. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the Request for Proposals for the anticipated interview.

(d) **Competitive Range**. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(e) The Authorized Agency may continue serial or simultaneous Negotiations until the Agency has determined:

(A) To award the Contract to the eligible Proposer with whom it is currently discussing or negotiating;

(B) To conduct Revised Rounds of Negotiations; or

(C) To cancel the Procurement under ORS 279B.100.

(f) **Revised Rounds of Negotiations**.

(A) **Process and Revisions**. After publication of the original Request for Proposals, the Authorized Agency may conduct successive rounds of Proposals achieved through Negotiations to gain the best Proposal for purposes of Award. These Negotiations may concern the price, Specifications, and final terms and conditions, separately or in any combination. The Agency must treat all Proposers fairly. Before the start of each round of Negotiations, the Agency must disclose the parameters of that round of Negotiations. At that time, the Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive round, the Agency may disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Agency may eliminate any Proposal after a round because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a subsequent round that requires additional Proposals based on the Revision(s). If any Revision is made by the Agency in any subsequent round, the Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal no longer applies.

(B) **Disclosures**. The initial Solicitation Document must disclose that a Revised Rounds of Negotiation process will or may be used. The Agency must give notice to all initial Proposers of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and award criteria, separately or in any combination. If the Agency discloses any prices, terms or conditions offered by other Proposers, the Agency must give notice of these disclosures to the initial Proposers.

(3) Regardless of OAR 137-047-0260 and 137-047-0261, State Contracting Agencies must comply with the following provisions:

(a) A report of any waiver of the thirty-percent-to-Contract-Price weighting requirement pursuant to ORS 279B.060 must be a Written report:

(A) on a form;

(B) delivered in a manner; and

(C) delivered within a time period approved by the State Chief Procurement Officer.

(b) In addition to setting forth the reasons for the waiver, the report must explain why the State Contracting Agency could not have practicably addressed, resolved or eliminated each of the stated reasons for requesting the waiver during the development of the solicitation and throughout the solicitation process.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.060
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**137-047-0260**

**Competitive Sealed Proposals**

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Contracting Agency shall use a Request for Proposal to initiate a competitive sealed Proposal solicitation. The Request for Proposal must contain the information required by 279B.060(2) and by section (2) of this rule. The Contracting Agency shall provide public notice of the Request for Proposal as set forth in OAR 137-047-0300.

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

(a) General Information.

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

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

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

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

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

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

(E) Proposer’s certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

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

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:

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

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

(C) Establish the expectations for the Contractor’s performance of any resulting Contract; and

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

(c) Proposal and Evaluation Process.

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

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the criteria shall:

(i) Afford the Contracting Agency the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;

(ii) Rationally reflect Proposers’ abilities to perform the resulting Contract in compliance with the Contract’s requirements; and

(iii) Permit the Contracting Agency to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the Contracting Agency of entering into a Contract based on each Proposal, considering information available to the Contracting Agency and subject to the understanding that the actual Contract costs may vary as a result of the Statement of Work ultimately negotiated or the quantity of Goods or Services for which the Contracting Agency contracts.

(C) If the Contracting Agency’s solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency shall generally describe, in the Solicitation Document, the criteria or parameters the Contracting Agency will apply to determine the Competitive Range. The Contracting Agency, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with OAR 137-047-0261(6).

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2) and 282.210.

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

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency’s determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See OAR 137-047-0260(3)).

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor’s failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

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

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

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

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

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

(5) Good Cause. For the purposes of this rule, “Good Cause” means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. A Contracting Agency will have Good Cause to specify otherwise when the Contracting Agency determines:

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

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

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

(d) That other circumstances exist in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency’s practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

(6) Waiver of Thirty-Percent-to-Contract-Price Weighting Requirement. ORS 279B.060(3)(e) and (9)(a) generally require a state Contracting Agency, when soliciting a Contract for Goods or Services using a Request-for-Proposal Contractor selection method, to give the proposed Contract price not less than thirty percent of the total weight that the agency gives to the total of all factors in the agency's final evaluation of a Proposal. ORS 279B.060(9)(b), however, empowers the director or other head of a state Contracting Agency to waive the at least thirty-percent-to-Contract-price final evaluation weighting requirement if the director or agency head makes a determination that a waiver is in the best interest of the state Contracting Agency. For the purposes of ORS 279B.060(9)(b), a determination that the waiver of the weighting requirement in ORS 279B.060(3)(e) and (9)(a) is in the best interest of the state Contracting Agency may be based on factors that may include, but are not limited to, any one or a combination of the following:

(a) Circumstances that support a finding that the requirement would unreasonably limit competition for the advertised Contract or would frustrate the procurement objectives of the state Contracting Agency. For example, where the state Contracting Agency is attempting to attract competition from smaller firms (like businesses owned by service-disabled veterans or emerging small business enterprises that are certified under ORS 200.055), allocating a substantial proportion of the weighting to Contract price may make larger, higher-volume firms disproportionately price-competitive, thereby impairing the smaller firms' chances of securing a Contract award.

(b) Where the state Contracting Agency will use the Goods or Services over a significant period, so that the long term costs of acquiring, using, or maintaining them constitutes a more important consideration than just the Contract price. Procurements in which the evaluation of life cycle costing will yield a more accurate assessment of the overall cost to the Contracting Agency or to the public fall within this category.

(c) Procurements in which the value or results of a successfully performed Contract or project are more important than the amount of direct payments under the Contract to be awarded.

(d) Procurements in which the adverse effects (which may include costs or losses) of project failure or of a failure in Contract performance can be anticipated to significantly outweigh the state Contracting Agency's burden of paying the Contract price.

(e) Circumstances in which the Contract price for the development or production of a design, process, or business solution are projected to be significantly less than the cost to the state Contracting Agency of implementing, operating, or maintaining the resulting design, process, or solution.

(f) Circumstances in which the Contract price for the development or production of a design, process, or business solution is projected to be significantly less than the monetary value to the state Contracting Agency of the successful implementation or the successful operation of the resulting design, process, or solution.

(g) Situations in which the savings the state Contracting Agency will realize from using the design, process, or solution that will result from the performance of the anticipated Contract will be more significant than the amount of the Contract price the state Contracting Agency will pay under the Contract.

(h) Conditions under which the consulting guidance or value-engineering assistance to be provided by the Contractor have the potential to produce long-term savings for the state Contracting Agency or for the public that will significantly exceed the anticipated Contract price of the advertised Contract. Examples may include circumstances in which Contractor expertise or experience in the selection of "next stage" products, configurations, or components for the completion of a project or for the operation of a system or of equipment likely will yield savings or efficiencies that eclipse the amount of the Contract price.

(i) Where the expertise, experience, or precision that a Contractor must provide in the performance of a service Contract or of a Contract for both Goods and Services is demonstrably more critical to the satisfaction of the state Contracting Agency's procurement objectives than the direct Contract price.

(j) Circumstances in which giving greater weight to the Proposers' satisfaction of technical, standard, dimensional, or mathematical specifications, and lesser weight to Contract price, will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services, or information technology (including hardware, Services, or software) with which the Goods or Services will be used, integrated, or coordinated.

(k) Where the Procurement represents the first or an early phase in a multiple phase project or in a multiple set of related Contract solicitations and the results of the Contract award under the Procurement can be anticipated to significantly affect the amount of the state Contracting Agency's costs in subsequent phases or solicitations.

(L) Where the state Contracting Agency employs serial negotiations or competitive simultaneous negotiations under ORS 279B.060(8), and the application of the weighting requirement in ORS 279B.060(3)(e) and (9)(a) could inhibit flexibility in negotiations or impede the ability of the agency or the Proposers to arrive at the most beneficial overall combination of Public Contract elements.

(m) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility, or availability in the Procurement of the Goods or Services significantly outweighs the Contract price the state Contracting Agency anticipates to pay under the advertised Contract.

(7) The director or head of a state Contracting Agency, or the designee of the director or agency head, must document in the Procurement file the basis for any determination that the waiver of the thirty-percent weighting requirement is in the best interest of the Contracting Agency. A director or head of a state Contracting Agency, or the designee of the director or agency head, must report each waiver of that requirement to the Director of the Department of Administrative Services in a Written report that outlines the reasons for the waiver. The requirement to report each waiver to the Director of the Department of Administrative Services does not apply to the Secretary of State or the State Treasurer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060, OL 2015, ch 325 (HB 2716)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16; DOJ 27-2018, f. 12-10-18 1-1-19

**137-047-0261**

**Multi-tiered and Multistep Proposals**

(1) Generally. A Contracting Agency may use one or more, or any combination, of the methods of Contractor selection set forth in ORS 279B.060(7), 279B.060(8) and this rule to procure Goods or Services. In addition to the procedures set forth in OAR 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multistep selection process that permits award to the highest ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.

(2) When conducting a multi-tiered or multistep selection process, a Contracting Agency may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In multi-tiered and multistep competitions, a Contracting Agency may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, and at any stage of the selection process, as determined in the discretion of the Contracting Agency.

(3) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(4) Exclusion Protest. A Contracting Agency may provide, before the notice of an intent to Award, an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in OAR 137-047-0720.

(5) Award Protest. A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and OAR 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

(6) Competitive Range. When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-047-0720.

(7) Discussions. The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.

(8) Negotiations. A Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. A Contracting Agency may negotiate:

(a) The statement of work;

(b) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(c) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(9) Terminating Negotiations. At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(10) Best and Final Offers. If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offers. The Contracting Agency shall conduct the evaluations as described in OAR 137-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

(11) Multistep Sealed Proposals. A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals under ORS 279B.060(8)(b)(g). Multistep sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit competitive sealed price Proposals on the technical Proposals. The Contracting Agency must award the Contract to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.

(a) Public Notice. When a Contracting Agency uses multistep sealed Proposals, the Contracting Agency shall give public notice for the first phase in accordance with OAR 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under OAR 137-047-0720.

(b) Procedure for Phase One of Multistep Sealed Proposals. A Contracting Agency may initiate a multistep sealed Proposals Procurement by issuing a Request for Proposals in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements required for competitive sealed Proposals, the multistep Request for Proposals must state:

(A) That unpriced technical Proposals are requested;

(B) That the solicitation is a multistep sealed Proposal Procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;

(C) The criteria for the evaluation of unpriced technical Proposals; and

(D) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.

(c) Addenda to the Request for Proposals. After receipt of unpriced technical Proposals, Addenda to the Request for Proposals shall be distributed only to Proposers who submitted unpriced technical Proposals.

(d) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.

(e) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.

(f) Discussion of Unpriced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one unpriced technical Proposal to any other Proposer.

(g) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(h) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule.

(j) No public notice need be given of the request to submit price Proposals because such notice was previously given.

(12) Waiver of Thirty-Percent-to-Contract-Price Weighting Requirement. Under ORS 279B.060(9)(b), the director or other head of a state Contracting Agency may waive the at least thirty-percent-to-Contract-price final evaluation weighting requirement of ORS 279B.060(3)(e) and (9)(a) in the conduct of a multi-tiered or multistep selection process. In making a determination that a waiver is in the best interest of the state Contracting Agency, the director or agency head may consider the factors identified in OAR 137-047-0260(6). A director or agency head that waives the thirty percent weighting requirement must comply with the documentation and reporting requirements of OAR 137-047-0260(7).

(13) Unless the Legislative Assembly extends the thirty-percent weighting requirement of ORS 279B.060(3)(e) and (9)(a) beyond the January 2, 2020 expiration date anticipated by 2018 Oregon Laws, chapter 85, sections 4 and 8(2), OAR 137-047-0260(6) and (7) and section (12) of this rule expire on January 2, 2020.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 27-2018, f. 12-10-18 & cert. ef. 1-1-18

**COMMENTARY ON OAR 125-247-0260:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rules OAR 137-047-0260 and 137-047-0261, and supplemented with Section (2).

**125-247-0265**

**Small Procurements**

(1) Generally. For Procurements of Goods or Services less than or equal to $10,000 an Authorized Agency may Award a Contract as a Small Procurement pursuant to ORS 279B.065.

(2) Amendments. An Authorized Agency may amend:

(a) A Contract Awarded as a Small Procurement before January 1, 2014 in accordance with OAR 125-247-0805, but the cumulative amendments must not increase the total Contract Price to a sum greater than $6,000; and

(b) A Contract Awarded as a Small Procurement on or after January 1, 2014 in accordance with OAR 125-247-0805, but the cumulative amendments must not increase the total Contract Price to a sum greater than $12,500.

(3) All State Contracting Agencies must comply with ORS 200.035 and applicable related Department statewide policy.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**125-247-0270**

**Intermediate Procurements**

(1) See OAR 137-047-0270.

(2) Regardless of OAR 137-047-0270, Authorized Agencies must comply with the following provisions:

(a) **Amendments**. If the cumulative value of the original Contract Price and all Amendments exceeds $150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater, then the Authorized Agency must request and obtain prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(b) **Written Solicitation**. Authorized Agencies are not required to use a Written Solicitation, unless an Agency’s Designated Procurement Officer requires a Written Solicitation. This Written Solicitation may allow revisions to the Solicitation and opportunity for protests, at the discretion of the Agency.

(c) **Documentation**. Authorized Agencies must document:

(A) The method used by the Agency; and

(B) Communications between the Agency and prospective Offerors.

(d) **Borderline Procurements**. If an Authorized Agency’s Designated Procurement Officer in good faith estimated that the Procurement would be equal to or less than $150,000, and learned thereafter that all of the Offers were minimally exceeding $150,000, this Procurement complies with ORS 279B.070 and this Rule upon the following conditions:

(A) The Designated Procurement Officer must document in the Procurement File the basis for the original estimate under $150,000 and the process used; and

(B) The Agency must comply with the remainder of ORS 279B.070 and this Rule.

(e) **Notice on ORPIN**. The Agency must post on ORPIN a notice that it is seeking at least three Offers.

(A) The Notice must provide:

(i) A general description of the Supplies and Services to be acquired;

(ii) Contact information;

(iii) An adequate time period in accordance with the DAS COBID (formerly MWESB) Policy; and

(iv) For Intermediate Procurements exceeding $100,000, the Time Period must be a reasonable interval of at least seven (7) calendar Days. Despite this Time Period, Authorized Agencies may determine that a shorter Time Period is in the public’s interest and that a shorter Time Period will not substantially affect competition. The Authorized Agency must document the specific reason for the shorter Time Period in the Procurement File in accordance with OAR 125-246-0556.

(B) OAR 125-247-0305 (Public Notice of Solicitation Documents) does not apply to Intermediate Procurements.

(f) **Negotiations**. An Authorized Agency may negotiate with an Offeror.

(g) Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(3) All State Contracting Agencies must comply with ORS 200.035 and applicable related Department statewide policy.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.070
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**137-047-0270**

**Intermediate Procurements**

(1) Generally. For Procurements of Goods or Services greater than the dollar amount stated in ORS 279B.065 and less than or equal to the higher dollar amount stated in ORS 279B.070, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) Negotiations. A Contracting Agency may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the Contracting Agency.

(3) Amendments. A Contracting Agency may amend a Contract Awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds the higher dollar amount stated in ORS 279B.070 or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

Stat. Auth.: ORS 279A.065 & 279B.070
Stats. Implemented: ORS 279B.070
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 5-2012, f. & cert. ef. 2-27-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

**125-247-0275**

**Sole-Source Procurements**

(1) **Generally**. An Authorized Agency with delegated authority according to OAR 125-246-0170 may award a Contract without a competitive process through a Sole-Source Procurement according to the requirements of ORS 279B.075, this Rule, and the policy of the Department. The Authorized Agency must make a determination of a sole source based upon Written findings of fact that the Supplies and Services are available from only one source.

(2) **Findings of Fact**. Findings of fact required under OAR 125-247-0275(1) may include:

(a) **Compatibility**. The efficient utilization of existing Supplies and Services requires the acquisition of compatible Supplies and Services from only one source. For example, compatibility may be implicated when: Supplies are required to directly interface with or attach to equipment of the same manufacturer and no other manufacturer’s Supplies will correctly interface with existing equipment; or when Services such as maintenance, warranty, project management, or systems integration are required to interface or integrate with existing Supplies and Services.

(b) **Exchange of Software or Data**. Specific Supplies and Services, which are available from only one source, may be required for the exchange of software or data with other public or private agencies. This finding may be particularly applicable when the Supplies and Services involve assets such as copyrights, patents, trademarks, and trade secrets.

(c) **Pilot or Experimental Project**. Supplies and Services are for the use in such projects, which may include but are not limited to research and economic development projects.

(d) Other findings that support the conclusion that Supplies and Services are available from only one source may include but are not limited to considerations of: unique design, availability, geographic location, exclusive authorized representative, cost of conversion, and warranty services.

(3) **Market Research**. ORS 279B.075 requires that the Authorized Agency “determines in writing” that the goods or services are “available from only one source.” This means that the Authorized Agency must conduct and document its market research before public notice described in Section (4) or (5).

(4) **Contracts up to $150,000**. For all Contracts awarded through Sole-Source Procurements over $10,000 and not exceeding $150,000:

(a) The Authorized Agency must place a public notice on ORPIN of its determination that the Supplies and Services or class of Supplies and Services are available from only one source.

(b) The public notice must describe the Supplies and Services to be acquired through a Sole-Source Procurement and identify the prospective Contractor and include the date, time and place that protests are due.

(c) The Authorized Agency must give Affected Persons at least seven calendar (7) Days from the date of the public notice of the determination that the Supplies or Services are available from only one source to protest the determination under OAR 125-247-0710. If the Department is conducting the Sole-Source Procurement, then the Department is the Authorized Agency for purposes of this Rule.

(d) The Authorized Agency must obtain the Written approval of that Agency’s Designated Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(5) **Contracts over $150,000**. For all Contracts exceeding $150,000:

(a) The Authorized Agency must place a public notice on ORPIN in accordance with Subsections (4)(a)-(c); and if the Department is conducting the Sole-Source Procurement, then the Department is the Authorized Agency for purposes of this Rule; and

(b) The Authorized Agency must obtain the Written approval of the Chief Procurement Officer or delegatee before the Authorized Agency places a public notice on ORPIN in accordance with this Section.

(6) **Negotiation**. According to ORS 279B.075 and to the extent reasonably practical, the Authorized Agency must negotiate with the sole source to obtain contract terms advantageous to the Authorized Agency.

(7) **Protest**. An Affected Person may protest the Authorized Agency's determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 125-247-0710.

(8) **Brand Name Requirements**. If the findings of fact required under this Rule include a specification of a Brand Name, that specification must be in accordance with ORS 279B.215 and OAR 125-247-0691.

(9) **Legal Sufficiency Review**. When legal sufficiency review by the Attorney General is required under ORS 291.047, the Authorized Agency must seek this approval.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.075
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2016, f. 12-22-16, cert. ef. 1-1-17

**COMMENTARY ON OAR 125-247-0275**

**Copyrighted Material.** An Authorized Agency may use a Sole-Source Procurement to purchase copyrighted materials without competitive bidding, if there is only one known supplier available for such Goods. Examples of copyrighted materials that might be covered by this Procurement include, but are not necessarily limited to: new adopted textbooks, workbooks, curriculum kits, reference materials, audio and visual media, and non-mass-marketed software. In 2005, no Class Special Procurement by Rule (OAR 125-247-0288) was created to replace the expiring exemption for copyrighted materials because this Sole-Source Procurement method appears to address most of the needs of the Agencies.

**125-247-0280**

**Emergency Procurements**

(1) An Authorized Agency may award a Contract as an Emergency Procurement under ORS 279B.080. An Authorized Agency has delegated authority to enter into an Emergency Contract according to OAR 125-246-0170.

(2) An Authorized Agency may, in its discretion, enter into a Contract without competitive Solicitation if an Emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must encourage competition that is reasonable and appropriate under the Emergency circumstances. However, for the emergency procurement of construction services that are not Public Improvements, see ORS 279B.080(2).

(4) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must, either before or promptly after entering into an Emergency Contract, make and retain in its Procurement File documentation of the nature of the Emergency that includes:

(a) A brief description of the Supplies and Services to be provided under the Contract, together with its cost or anticipated cost;

(b) A brief explanation of how the Contract, in terms of duration or Supplies and Services provided under it, was restricted to the Scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances;

(c) A description of the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and

(d) Documentation of the measures taken under Section (3) to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(5) The head of the Authorized Agency, or a person designated under ORS 279A.075, must authorize the conduct of the emergency procurement, and must review and approve the documentation required by Section (4) of this Rule.

(6) Any Contract awarded under this Rule must be awarded no later than sixty (60) days following the approval of the documentation of the emergency unless the head of the Authorized Agency or Person designated has granted an extension.

(7) Agencies must also comply with OAR 137-045-0070, Emergency Public Contract Exemption, if applicable. The Authorized Agency must maintain a copy of any required report in the Authorized Agency's Emergency Procurement File.

(8) For an Emergency Procurement of construction services that are not Public Improvements, the Authorized Agency must insure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the Procurement, the Authorized Agency must set a solicitation time period that the Authorized Agency determines to be reasonable under the emergency circumstances and may issue Written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity.

(9) **2009 “Go Oregon!” Economic Stimulus Package**.

(a) **Program**. The 2009 “Go Oregon!” Economic Stimulus Package, Enrolled Senate Bill 338, House Bill 5562 and related legislative measures (Program), provides funding and direction to identified Authorized Agencies for deferred maintenance, capital construction, capital renewal, code compliance, safety, renovation, and other construction projects (Projects). The Program’s objective is to stimulate Oregon’s economy through job growth by providing opportunities to local businesses and certified minority, women and emerging small businesses. The Director of the Department has made a determination of emergency circumstances and documented the nature of the Emergency under the Program (Emergency Determination). Most of the Projects are not Public Improvements as defined in OAR 125-246-0110(127). ORS 279C.320 provides that ORS 279B.080 regulates these Projects.

(b) **Application**. Sections (2) through (6) of this Rule do not apply to Procurements and Contracts under the Program.

(c) **Emergency Documentation**. The Emergency Determination documents the nature of the Emergency on behalf of the Authorized Agencies to satisfy the requirement of ORS 279B.080. No further documentation that an Emergency exists is required of the Authorized Agencies.

(d) **Authorization**. The Designated Procurement Officer, or designee, of the Authorized Agency must authorize Procurements under the Program and may determine whether to excuse the requirement of furnishing a good and sufficient performance bond or payment bond.

(e) **Procurement Processes**. The Authorized Agencies may conduct expedited Emergency Procurement processes, including but not limited to: informal or formal requests for quotes, invitations to bid, and requests for proposals; special procurements; and direct awards. Any of these processes may be utilized regardless of project value.

(f) **Project Documentation**. The Authorized Agency must retain in its Procurement File(s) the following documentation of its Emergency Procurements and Contracts under the Program:

(A) Copies of all data requested by the Department;

(B) A brief description of the Project;

(C) A description of how the particular contractor was selected and the measures taken to encourage competition, if reasonable and appropriate under the emergency circumstances.

(D) A statement by the Designated Procurement Officer, or designee, excusing performance and payment bonds for the Project in accordance with ORS 279C.380(4), if applicable.

(g) **Timing**. The documentation described in Section (9)(f) may occur a reasonable time after the award of the Contract. No documentation is required before the award of the Contract.

(10) **Other State Economic Stimulus Programs**.

(a) **Application**. For any other state economic stimulus program that is administered by the Department or an Authorized Agency (State Program), Sections (9)(d) through (g) replace Sections (2) through (6) of this Rule and apply to the State Program on the following condition: the Department or Authorized Agency determines that the State Program is in response to adverse economic circumstances.

(b) **Emergency Determination and Documentation**. The Director of the Department may make an emergency determination and document the nature of the Emergency on behalf of Authorized Agencies. Regardless of any determination by the Director of the Department, an Authorized Agency may make an emergency determination and document the nature of the Emergency on that Agency’s behalf and in accordance with ORS 279B.080.

(11) **Federal Economic Stimulus Programs**.

(a) **Application**. For any federal economic stimulus program that is administered by the Department or an Authorized Agency (Federal Program), Sections (9)(d) through (g) replace Sections (2) through (6) of this Rule and apply to the Federal Program upon the following condition: the Department determines that the Federal Program is in response to adverse economic circumstances.

(b) **Emergency Determination and Documentation**. The Director of the Department may make an emergency determination and document the nature of the Emergency on behalf of Authorized Agencies. Regardless of any determination by the Director of the Department, an Authorized Agency may make an emergency determination and document the nature of the Emergency on that Agency’s behalf and in accordance with ORS 279B.080.

(12) **Amendment**. An Authorized Agency may modify a Contract awarded as an Emergency Procurement if the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency. This modification may be made by change order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.080 & 279C.320
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 5-2009(Temp), f. & cert. ef. 2-13-09 thru 8-12-09; DAS 9-2009, f. & cert. ef. 8-11-09; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**125-247-0285**

**Special Procurements; Purpose and Application**

(1) **Generally**. An Authorized Agency may award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) **Purpose**. Pursuant to ORS 279B.085, these Rules establish the criteria for procuring Supplies and Services through Special Procurements by the Department and Authorized Agencies. Authorized Agencies must have delegated authority pursuant to OAR 125-246-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**COMMENTARY ON OAR 125-247-0285: Revised December 1, 2012**

**Section (1):** Adapted OAR 137-047-0285(1)

**125-247-0286**

**Special Procurements; Definitions**

As used in this Section and ORS 279B.400:

(1) "**Class Special Procurement**" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time or for multiple projects.

(2) "**Contract-specific Special Procurement**" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single project.

(3) "**Special Procurement**" means, unless the context requires otherwise, a class Special Procurement, a contract-specific Special Procurement or both.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08

**125-247-0287**

**Special Procurements; Request Procedures**

(1) **Approval**. An Authorized Agency may request approval of its new or amended Special Procurement from the State Chief Procurement Officer. The request must describe one or more particular Contracts or class of Contracts and use the designated ORPIN form. A request for a Special Procurement concerns the procurement process only, and the authority to use the Special Procurement is determined under OAR 125-246-0170.

(2) **Requests**. Special Procurement Requests must contain the following:

(a) Request must include reason(s) why Agency has elected to use Special Procurement and how it will benefit the Agency or the public.

(b) The Request must include findings, market research, or other documentation that the Special Procurement:

(A) Is unlikely to encourage favoritism in the awarding of Public Contracts or to substantially diminish competition for Public Contracts, and

(B) Either:

(i) Is reasonably expected to result in substantial cost savings to the Agency or to the public; or

(ii) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any related Rules.

(c) The alternative process designed by the Agency must be clear and complete, including a description of the Supplies and Services that are the subject of the Special Procurement, provisions for advertisement, a procurement process, including provisions for Amendment and criteria for selection, and the proposed contract document.

(d) The State Chief Procurement Officer may require any additional information deemed necessary to evaluate the Agency's request for approval of a Special Procurement.

(3) **Effect**. The Special Procurement approval is effective only after the State Chief Procurement Officer's approval of the findings and Request and completion of the Public Notice required under section (4) of this Rule.

(4) **Public Notice**. The Public Notice process and requirements are as follows:

(a) **General**. The requesting Authorized Agency must give public notice of the approval of its Special Procurement as required under ORS 279B.085(5) and in accordance with this Rule, unless otherwise directed by the State Chief Procurement Officer (Public Notice). As a Written condition to approval of the Special Procurement, the State Chief Procurement Officer may require that the Department instead of the requesting Agency give the Public Notice.

(b) **Content**. The Public Notice must at least describe the Supplies and Services or class of Supplies and Services to be acquired through the Special Procurement.

(c) **Time Periods**.

(A) Public Notice of the approval of the Special Procurement must be given at least seven (7) Days before the commencement of the Special Procurement.

(B) If the Special Procurement involves one or more Solicitations, the Solicitation Document must either include the attached request and approval of the Special Procurement or incorporate the request and approval by reference with the documents easily accessible to Affected Persons.

(d) An Agency may request certain information to be withheld from the public notice requirement of this Rule in cases where confidentiality or security may be jeopardized only according to an exception under the Public Records Law (ORS 192.410 through 192.505).

(5) **Protest**. An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and OAR 125-247-0700.

(6) **Reference**. Any Solicitation or Contract resulting from a Special Procurement approval must contain a reference to the number of the approved Special Procurement.

(7) **Conditions**. If the State Chief Procurement Officer provides Written approval of the proposed Special Procurement (Approval), the Authorized Agency must award any Contract under the Special Procurement in accordance with the conditions of this Approval and any subsequent amendments to the Approval. The Approval may include conditions, including but not limited to expiration, Public Notice and dollar limitations, and may be revoked at any time by the State Chief Procurement Officer.

(8) If an Authorized Agency competitively solicits, it must comply with the process described in the Special Procurement or the Rules for that method of Solicitation according to ORS 279B.055 through 279B.070 and 279A.200 et seq.

(9) Nothing in this Rule exempts the Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(10) All State Contracting Agencies must comply with ORS 200.035 and applicable related Department statewide policy, despite this Rule.

(11) If an Authorized Agency intends to award a Contract through a Special Procurement that calls for competition among prospective contractors, the Authorized Agency must award the Contract to the Offeror the Authorized Agency determines to be the most advantageous to the Authorized Agency.

(12) **Reporting**. An Authorized Agency must comply with ORS 279A.165, including but not limited to:

(a) **Application**. This section (12) applies to all Special Procurements advertised or otherwise solicited on or after January 1, 2012.

(b) **Records**. An Authorized Agency must maintain records about its Special Procurements that enable the Agency to determine and provide to the State Chief Procurement Officer at least the following information:

(A) The name of the Agency that conducted each Special Procurement;

(B) The number of Special Procurements the Agency conducted;

(C) The number of contracts awarded through each Special Procurement;

(D) A summary of the reasons that the Agency decided to conduct each Special Procurement;

(E) A descriptive summary of the procurement procedure used to conduct the Special Procurement, noting whether the procedure was competitive or not;

(F) A listing of the number of Offers the Agency received if the Special Procurement procedure was competitive;

(G) The Contract Price or estimated Contract Price for each Contract awarded through a Special Procurement;

(H) A summary of the protests or other responses to the approval of each Special Procurement that the Agency received; and

(I) A summary of the disposition of the protests or other responses described in subsection 12(b)(H).

(c) **Reports**. Authorized Agencies must provide to the State Chief Procurement Officer the information in section (12)(b) of this Rule.

(A) **Form**. Agencies must report on a form approved by the State Chief Procurement Officer.

(B) **Timing**. Agencies must deliver regular reports on the approved form to the State Chief Procurement Officer no later than the dates announced by the State Chief Procurement Officer.

(d) Section (12) of this Rule is effective on the date of the filing of this amended Rule.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.165 & 279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 4-2016, f. 12-22-16, cert. ef. 1-1-17; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**COMMENTARY ON OAR 125-247-0287**

**Section (5)**: adapted OAR 137-047-0285(3)

**125-247-0288**

**Special Procurements; by Rule**

(1) **Client Placement and Client Health Care Services**.

(a) **Authorization and Application**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to enter into Written agreements for Client Placement and Client Health Care services, as described in this Rule. When an Authorized Agency determines that a need exists to secure or maintain Client Placement Services or to secure Client Health Care Services, the Authorized Agency may contract subject to the following definitions and conditions of this Section (1).

(A) "**Client Placement Services**" means securing, enhancing, or continuing the placement of a Client in a structured family-like setting or residential setting operated by a qualified Provider.

(B) "**Client Health Care Services**" means health care services or provision of incidental or specialized supplies related to the health of a Client. Client Health Care Services include but are not limited to: preventive, diagnostic, therapeutic, behavioral, rehabilitative, maintenance, or palliative care and counseling services, assessment, or procedure with respect to the physical or mental condition, or functional status of a Client, or that affect the structure or function of the body; and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

(C) Services that may prevent a placement or placement disruption but that cannot definitively be classified as Client Placement Services by the Authorized Agency are deemed to be Client Placement Services and are subject to the Special Procurement approved under this Rule. This Special Procurement for Client Placement Services may include training only if it is provided directly to the Client, excluding Providers.

(b) Authorized Agencies must execute a Contract or amendment to an existing Contract within 180 days of obtaining the Client Placement Services or Client Health Care Services as defined herein. Should the Authorized Agency fail to execute the Contract within this specified period, then the Authorized Agency may execute the Contract if:

(A) A Written statement of justification that describes the unforeseen or unavoidable circumstances that were reasonably unanticipated and preclude the Authorized Agency from executing the Contract within the initial 180 day period; and

(B) A copy of the Written justification is maintained in the Procurement File.

(c) The Authorized Agency may not make any payments for Client Placement Services or Client Health Care Services before obtaining all requisite approvals of the Contract.

(d) An Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency elects to use one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency elects to create its own source selection method, it must document the file describing why the alternate method was selected.

(e) The Authorized Agency must ensure that all Procurement personnel responsible for procuring Placement Services or Client Health Care Services are provided training on the conditions and limitations of this Rule.

(f) **Contract and Amendment Forms**.

(A) **Original Forms**. Authorized Agencies must use a Contract form and Amendment form (Form) approved by the State Chief Procurement Officer when acquiring Client Placement Services or Client Health Care Services according to this Rule. The State Chief Procurement Officer may approve the Form by facsimile, email, letter or any other method that provides an objective means to verify its approval. The Authorized Agency must review the approved Form at least every two years.

(B) **Revised Forms**.

(i) **Designated Procurement Officer Approval up to $150,000**. For revised Forms up to a cumulative value of $150,000 and before an Authorized Agency may use a revised Form, it must obtain its Designated Procurement Officer’s approval of any revisions to a Form’s terms and conditions. The Designated Procurement Officer’s approval is not required for revisions to Form exhibits that are unrelated to terms and conditions.

(ii) **Department of Justice Approval over $150,000**. For revised Forms exceeding a cumulative value of $150,000 and before an Authorized Agency may use a revised Form, it must obtain Department of Justice approval of any revisions to the revised Form’s terms and conditions. The Department of Justice approval is not required for revisions to Form exhibits that are unrelated to terms and conditions. The Department of Justice approval may be delivered by facsimile, email, letter or any other objective means of approval. Upon an Authorized Agency's request, the Department of Justice may approve a revised Form for repeated use for a specific class or classes of transactions.

(g) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(2) **Client Services Source Selection**.

(a) An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement Rule.

(b) The State Chief Procurement Officer waives the source selection requirements as found in OAR 125-247-0200 for Authorized Agencies to procure Client Services, as Client and Client Services are defined in OAR 125-246-0110.

(c) The Authorized Agency is urged to solicit for Client Services when there is known competition. Under these circumstances, the Authorized Agency may:

(A) Use one of the defined source selection methods as found in OAR 125-247-0200. If an Authorized Agency uses one of the defined source selection methods, it must conduct it in accordance with the Code, Rules and Department policies; or

(B) The Authorized Agency may elect to create its own source selection method. If an Authorized Agency creates its own source selection method, it must document the file describing why the alternate method was selected. This Subsection (2)(c) does not apply to Section (1) above.

(3) **Renegotiations of Existing Contracts with Incumbent Contractors**.

(a) **Authorization**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to renegotiate and amend an existing Contract with an incumbent Contractor within the term of the contract, when market conditions have changed and it is in the best interest of the State.

(b) **Process and Criteria**. The Authorized Agency may renegotiate various items of the Contract, including but not limited to: price, term, delivery and shipping, order size, item substitution, warranties, discounts, on-line ordering systems, price adjustments, product availability, product quality, and reporting requirements. The Authorized Agency must post notice on ORPIN. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047. The Authorized Agency must meet the following conditions in its Renegotiations with incumbent Contractors:

(A) **Favorable Result**. The Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the State as the Original Contract and document this in the Procurement File. For example, the Authorized Agency and the Contractor may adjust terms and conditions within the Original Contract to meet different needs;

(B) **Within the Scope**. The Supplies and Services provided under the renegotiated Contract must be reasonably related to the Original Contract's Solicitation. For example, the Authorized Agency may accept functionally equivalent substitutes for any Supplies and Services in the Original Contract's Solicitation;

(C) **Optional Term or Condition**. If a Contractor offered to the Authorized Agency during the original Solicitation a term or condition that was rejected at that time, (for the purpose of this Subsection only, Rejected Term or Condition), the Authorized Agency may not renegotiate for a lower price based on this Rejected Term or Condition as a mandatory term or condition in the renegotiated Contract. If, however, a Contractor offers a lower price according to a Rejected Term or Condition without additional consideration from the Authorized Agency and as only an option to the Authorized Agency, then the Authorized Agency may accept the option of a lower price under the Rejected Term or Condition. For example, if the Authorized Agency initially rejected a Contractor's proposed Condition that the price required a minimum order, any renegotiated Contract may not mandate this Condition; but the Authorized Agency may agree to the option to order lesser amounts or receive a reduced price based upon a minimum order; and

(D) **Market**. In order to avoid encouraging favoritism or diminishing competition, the Authorized Agency must research the accepted competitive practices and expectations of Offerors within the market for the specific Contract(s) or Classes of Contracts to be renegotiated (Market Norm). The Authorized Agency must document the results of the Market Norm research in the Procurement File. Based upon this information, the Authorized Agency must confirm that, if the Authorized Agency follows the Market Norm, favoritism is not likely to be encouraged, competition is not likely to be diminished, and substantial cost savings may be realized. Under no condition may the Authorized Agency accept or follow any Market Norm that likely encourages favoritism or diminishes competition, even if it is accepted or expected in the market.

(4) **Advertising Contracts**.

(a) **Authorization**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule to purchase media advertising, regardless of dollar value, without competitive bidding, according to OAR 125-246-0170.

(b) **Process and Criteria**. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds $10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(5) **Equipment Repair and Overhaul**.

(a) **Authorization**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for equipment repair and overhaul, as described in this Rule.

(b) **Conditions**. An Authorized Agency, having delegated purchasing authority according to OAR 125-246-0170, may enter into a Public Contract for equipment repair or overhaul without competitive bidding, subject to the following conditions:

(A) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

(B) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and

(C) The Authorized Agency purchases within the limits and according to the methods in (5)(c) of this Rule.

(c) **Process and Criteria**. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds $10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(6) **Contracts for Price Regulated Items**.

(a) **Authorization**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of price regulated items, and the Authorized Agency must comply with the conditions of this Rule. An Authorized Agency having delegated purchasing authority according to OAR 125-246-0170 may, regardless of dollar value and without competitive bidding, contract for the direct purchase of Supplies and Services where the rate or price for the Supplies and Services being purchased is established by federal, state, or local regulatory authority.

(b) **Process and Criteria**. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds $10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(7) **Investment Contracts**.

(a) **Authorization**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for investment Contracts, including related Contracts arising from or giving rise to investment opportunities (collectively, investment Contracts), as described in this Rule. An Authorized Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by the Authorized Agency when such investment or borrowing is contracted according to duly enacted statute, or constitution.

(b) **Process and Criteria**. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds $10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(8) **Food Contracts**.

(a) **Intent**. The intent of this Rule is to provide a method for Authorized Agencies to procure food products, which are available for a limited period of time at "lower than normal" prices (also referred to as "spot buys") (Food Contracts).

(b) **Authorization**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule for the Procurement of Food Contracts, and the Authorized Agency must comply with the conditions of this Rule.

(c) **Conditions**. An Authorized Agency may procure an unlimited dollar value of food using a competitive bid or quote process when all of the following conditions are present:

(A) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing Mandatory Use Contract or any recent bid and the amount saved exceeds any additional administrative costs incurred to purchase using this Special Procurement;

(B) The product being purchased has limited availability (i.e., the product may no longer be available upon completion of normal bid processes); and

(C) The purchase does not jeopardize fulfillment of a guaranteed minimum volume under an existing Mandatory Use Contract.

(d) **Documentation**. Purchases may only be made under this Special Procurement after the Authorized Agency documents the following in its Procurement File in accordance with OAR 125-246-0556: the Authorized Agency's attempt and method to obtain Quotes from at least three sources; the Written Quote or Bid, if obtained; item Specifications; quantity; unit pricing; delivery; and other pertinent information. Contract or bid pricing used for comparison must be representative of current pricing available and must have been obtained or confirmed no more than six (6) months before the current purchase. When practical, Written Quotes are recommended.

(e) **Process and Criteria**. Authorized Agencies must use competitive methods where practicable to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds $10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN, except when the competitive method involves verbal Quotes for perishable food. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(9) **Purchase of Used Personal Property**.

(a) **Authorization**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule Subject to the provisions of this Rule, an Authorized Agency may purchase used property or equipment without competitive bidding and without obtaining Quotes, if, at the time of purchase, the Agency has determined and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition; and (ii) result in substantial cost savings or promote the public interest. "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of the Authorized Agency purchase. "Used personal property or equipment" generally does not include property or equipment if the Authorized Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(b) **Process and Criteria**.

(A) For purchases of used personal property or equipment not exceeding $150,000, Authorized Agencies having delegated authority according to OAR 125-246-0170, must, where feasible, obtain three Quotes, unless the Authorized Agency has determined and documented that a purchase without obtaining Quotes will result in cost savings to the Authorized Agency and will not diminish competition or encourage favoritism.

(B) For purchases of used personal property or equipment exceeding $150,000, the Department must obtain and keep a Written record of the source and amount of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain Quotes.

(C) If the total purchase is estimated to exceed $150,000, an Authorized Agency must submit a Written request for a Written delegation of authority from the State Chief Procurement Officer before making the purchase.

(D) Authorized Agencies must use competitive methods wherever possible to achieve best value and must document in Agency policy or the Procurement File the reasons why a competitive process was deemed to be impractical. If the anticipated purchase exceeds $10,000 and a competitive method is used, the Authorized Agency must post notice on ORPIN. The resulting Contract must be in Writing and the Authorized Agency Procurement File must document the use of this Special Procurement Rule by number to identify the sourcing method. Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

(10) **Reverse Auctions**.

(a) **Authority**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule.

(b) **Process**. A Reverse Auction means a process for the purchase of Supplies and Services by a buyer from the lowest Bidder. The Authorized Agency as the buyer must conduct Reverse Auctions by first publishing a Solicitation that describes its requirements, Contract terms and conditions. Then, the Authorized Agency must solicit online Bids from all interested Bidders through an Internet-based program. The Solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the Reverse Auction:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. Before the Reverse Auction commences, Bidders must be required by the Authorized Agency to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the Authorized Agency. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores and related details, separately or in any combination thereof, will be revealed to the participants. The Authorized Agency may cancel this Solicitation if this Agency determines that it is in this Agency's or the State's best interest. At the end of this Bidding process, the Authorized Agency must award any potential Contract to the lowest Responsible Bidder or in the case of multiple awards, lowest Responsible Bidders according to ORS 279B.055(10)(b). This process allows the Authorized Agency to test and determine the suitability of the Supplies and Services before making the Award. The Authorized Agency must comply with the following procedures for this type of Solicitation:

(c) **Policy**. The Authorized Agency must follow the policy of the Department.

(d) **Public Notice**.

(A) The Authorized Agency must disclose the Reverse Auction process in the Solicitation Document. The Reverse Auction process must include the manner of giving notices of the price(s) offered, rank(s), score(s), and related details to the initial Bidders.

(B) The Authorized Agency must provide initial notice of this Solicitation through ORPIN.

(C) If the value exceeds $150,000, the Authorized Agency must issue a Notice of Intent to award at least seven (7) calendar Days before making the Award.

(e) **Prequalification**. For each Solicitation, on a case-by-case basis, the Authorized Agency may determine whether prequalification of suppliers is needed. If prequalification is used, the Authorized Agency must prequalify suppliers and provide an appeal process in accordance with ORS 279B.120 and related Rules.

(f) **E-Procurement**. The requirements of OAR 125-247-0330 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of this Section (10) take precedence over the more general requirements of OAR 125-247-0330.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12 ; DAS 4-2016, f. 12-22-16, cert. ef. 1-1-17; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**125-247-0295**

**Special Procurements: General or Special Counsel Authorized by the Attorney General**

(1) **Authority and Application**. An Authorized Agency with delegated authority under OAR 125-246-0170 may use this Special Procurement by Rule. Under ORS 180.235, the Oregon Attorney General may authorize a public officer or Agency to retain its own general or special counsel, including but not limited to conflict counsel, other than the Department of Justice. This Rule governs the process for obtaining such counsel.

(2) **Definitions**.

For purposes of this Rule only, these terms have the following meanings:

(a) "**Attorney General**" means the Attorney General of the State of Oregon.

(b) "**Authorized Agency**" means a public officer or Agency that the Attorney General authorized to retain its own general or special counsel other than the Department of Justice under ORS 180.235.

(c) "**Authorized Legal Services**" means the legal services as authorized by the Attorney General for the particular matter or class of matters and as required by the Authorized Agency.

(d) "**Outside Counsel**" means general or special counsel selected by the Authorized Agency under this Rule.

(e) "**Firm**" means the proprietorship, partnership or professional legal corporation engaged in the practice of law of which Outside Counsel is a partner, a shareholder, an associate, a member, or a lawyer serving as "of counsel."

(f) "**Solicitation**" means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

(3) **Selection Criteria**.

(a) The Authorized Agency must select the Firm it considers most advantageous based on the following factors:

(A) The knowledge, skills and ability of the Firm that will provide Authorized Legal Services. The Firm's ability to provide Authorized Legal Services includes the training and expertise of the Firm attorneys, including Outside Counsel. Outside Counsel must be a member of the Oregon State Bar according to ORS 180.235(2);

(B) The Firm's experience, level of expertise and suitability to perform the Authorized Legal Services;

(C) Whether the Firm's available personnel possess any required licenses or certifications required to perform the legal services for the Authorized Legal Services, such as licenses to practice law in the appropriate jurisdiction, or to appear in a certain forum;

(D) The Outside Counsel’s availability and capability to perform the Authorized Legal Services and meet the Agency’s needs;

(E) The commitment the Outside Counsel and Counsel’s Firm can make to the Authorized Agency to meet the Agency’s needs;

(F) The value of the Firm's legal services, taking into account the cost of the Firm's legal services; and

(G) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(b) In weighing the evaluation factors, no single factor is determinative.

(4) **Scope of Firms Considered**. The Solicitation process may range from direct negotiation and contracting with a single firm to publication of a request for proposals. The Authorized Agency must extend Solicitations to those firms that it considers reasonable and practical to solicit under the circumstances, and must take into consideration the following factors:

(a) When the subject matter of the Authorized Legal Services requires specialized knowledge in a particular field of law, the Authorized Agency may limit the Solicitation to prospective Firms that have a reputation of subject matter expertise in that field of law;

(b) The Authorized Agency must limit the number of Firms considered under the Solicitation as appropriate if the interests of the Authorized Agency would likely be adversely affected by delay in obtaining a Firm or through broad distribution of the Solicitation; and

(c) Other factors the Authorized Agency considers relevant to accomplish an optimal, timely outcome.

(5) **Documentation of Selection**.

(a) The Authorized Agency must prepare a record of selection signed by the public officer or Agency designated to be responsible for the selection process. The record of selection must include the public officer’s or Agency’s summary of:

(A) The Solicitation process used and the Firms considered in the Solicitation process;

(B) Why the selected firm is considered most advantageous to the Authorized Agency; and

(C) Why the Scope of the Solicitation was reasonable and practical under the circumstances.

(b) As used in (5)(a) above, the public officer may include a member of the Authorized Agency’s board or commission.

(c) The record of solicitation must be retained by the Authorized Agency within the Procurement File for the Firm.

(6) The Agency may procure Amendments to existing Contracts under this Rule. In lieu of complying with Sections (4) through (5) of this Rule, the Agency must document why amending the Contract is necessary and in the best interest of the State.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.075, 279B.085
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

**125-247-0296**

**Price Agreements and Mandatory Use Contracts**

(1) Mandatory Use Contracts, for the purposes of this Rule and including Department Price Agreements, service agreements, and sales agreements, may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining Agency requirements for volume discounts, standardization among Agencies, and reducing lead time for ordering. A Mandatory Use Contract requires the Authorized Agency to purchase Supplies and Services for an anticipated need at a predetermined price, provided the Mandatory Use Contract is let by a competitive Procurement Process according to the requirements of ORS 279ABC and these Rules.

(2) Authorized Agencies may purchase the Supplies and Services from a Contractor awarded a Mandatory Use Contract without first undertaking additional competitive Solicitation.

(3) Authorized Agencies must use Mandatory Use Contracts established by the Department unless otherwise specified in the Contract, allowed by law or these Rules, or specifically authorized by the Chief Procurement Officer.

(4) Despite section (3) above, Authorized Agencies are exempted from Mandatory Use Contracts for acquisition of the following, regardless of dollar amount:

(a) Supplies and Services from another Oregon Public Agency provided that a formal, Written agreement is entered into between the parties;

(b) Personal property for resale through student stores operated by public educational Agencies; and

(c) Emergency purchases declared by an Authorized Agency according to ORS 279B.

(5) Authorized Agencies may be exempted from a Mandatory Use Contract upon a request to and approval by the Contract Administrator of the Mandatory Use Contract.

(6) The term of the Contract, including renewals, must not exceed the maximum term stated in the original Solicitation.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15

**125-247-0300**

**Procurement Process; Applicability of General Rules to Methods of Source Selection**

(1) **Generally**. These Procurement Process Rules are intended to apply to more than one sourcing method according to ORS 279B.050 through 279B.085 and to specify those methods.

(2) In the event of conflict or ambiguity arising from specific requirements of another Rule in Division 247 and a general Rule in OAR 125-247-0305 through 125-247-0691, the specific requirements of another Rule take precedence over the more general requirements of a Rule under Procurement Process.

(3) If a general Rule in OAR 125-247-0305 through 125-247-0691 is silent regarding its specific application or an ambiguity arises regarding the application of any such Rule to any of the seven sourcing methods of ORS 279B.050 through 279B.085, that Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0261.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**125-247-0305**

**Public Notice of Solicitation Documents**

(1) **Application**. This Rule applies only to Bidding and Proposals in accordance with ORS 279B.055, 279B.060, and OAR 125-247-0255 through 125-247-0260.

(2) **Notice of Solicitation Documents**.

(a) **Official Notice**. An Authorized Agency must post public notice of every Solicitation Document on ORPIN in accordance with OAR 125-246-0500 (Official Notice).

(b) **Additional Notice**. The Authorized Agency may give additional notice if:

(A) The additional notice refers to the Official Notice, and

(B) The Authorized Agency uses any method it determines appropriate to foster and promote competition, including:

(i) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Authorized Agency's Procurements;

(ii) Placing notice on the Authorized Agency's Internet World Wide Web site; or

(iii) Publishing notice in a newspaper of general circulation as described in ORS 279B.055(4) (Additional Notice).

(3) **Content of Official and Additional Notices**. All notices for solicitation of Offers must set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Supplies and Services to be acquired;

(c) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Supplies and Services is one for which Persons must be prequalified;

(d) The office where contract terms, conditions and Specifications may be reviewed if not electronically attached;

(e) The name, title and address of the individual authorized by the Authorized Agency to receive Offers;

(f) The scheduled Opening; and

(g) Any other information the Authorized Agency deems to be appropriate.

(4) **Notice Time Periods**.

(a) The Authorized Agency must give Official Notice of an Invitation to Bid at least fourteen (14) Days before the Closing.

(b) The Authorized Agency must give Official Notice of a Request for Proposals at least thirty (30) Days before the Closing.

(c) The Authorized Agency may give Additional Notice for any reasonable time

(d) Despite Section (4)(a) and (b), the Authorized Agency may determine that a shorter time period is in the public's interest and that a shorter time period will not substantially affect competition. In no event may the Authorized Agency give any Official Notice less than seven (7) Days before Closing. The Authorized Agency must document the specific reasons for the shorter time period in the Procurement File in accordance with OAR 125-246-0556.

(e) Despite other provisions of this Rule, the public notice time period for a Qualified Products List is at least seven (7) days.

(5) **Availability of Written Advertisement for Offers**. Upon the request of any member of the public, the Authorized Agency must provide a copy of each advertisement for Offers and all supporting documents, to be located in the Procurement File or an identified repository.

(6) **COBID Certified Firms**. In accordance with ORS 200.035, and applicable related Department statewide policy, a State Contracting Agency, as defined in ORS 279A.010, must provide Timely Notice, in Writing, to the Governor’s Policy Advisor for Economic and Business Equity of each Solicitation and contracting opportunity exceeding $10,000. As used in ORS 200.035 and this Rule, “Timely Notice” means at the time the State Contracting Agency advertises or solicits Bids or Proposals and at the time the State Contracting Agency publicly releases the Contract.

(7) **Fees**. The Authorized Agency may charge a fee or require a deposit for the Solicitation Document, supporting documents and any combination thereof.

(8) **Notice of Addenda**. The Authorized Agency must provide notice to potential Offerors on ORPIN of any Addenda to a Solicitation Document in accordance with OAR 125-247-0430.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10 ; DAS 4-2016, f. 12-22-16, cert. ef. 1-1-17; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**125-247-0310**

**Bids or Proposals are Offers**

See OAR 137-047-0310.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0310**

**Bids or Proposals are Offers**

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in OAR 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in OAR 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) Contingent Offers. Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to OAR 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) Offeror's Acknowledgment. By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposers to propose alternative terms or conditions under OAR 137-047-0261, the Offeror's Offer includes any nonnegotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279B.055 & 279B.60
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

**125-247-0320**

**Facsimile Bids and Proposals**

See OAR 137-047-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0320**

**Facsimile Bids and Proposals**

(1) Contracting Agency Authorization. A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

(a) To receive, identify, record, and safeguard facsimile Offers;

(b) To ensure timely delivery of Offers to the location of Opening; and

(c) To preserve the Offers as sealed.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

(a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";

(b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";

(c) A provision that requires Offerors to Sign their facsimile Offers;

(d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";

(e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**125-247-0330**

**E-Procurement**

(1) **General**.

(a) **Electronic Processes**. An Authorized Agency may conduct all phases of a Procurement, including without limitation, the posting of Electronic Advertisements and the receipt of Electronic Offers, by the following electronic processes:

(A) E-Bidding;

(B) Reverse Auction; or

(C) Special Procurement if (i) or (ii) are not appropriate (Electronic Processes). The Authorized Agency must specify in a Solicitation Document, a request for Quotes, or any other Writing that instructs Persons how to participate in the Procurement.

(b) **Security Measures**. The Authorized Agency must open an Electronic Offer in accordance with electronic security measures in effect at the Authorized Agency at the time of its receipt of the Electronic Offer. Unless the Authorized Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Authorized Agency's use of electronic Signatures must be consistent with applicable statutes and rules. An Authorized Agency must authorize, and may limit the use of Electronic Processes of conducting a Procurement based on the best interests of the Authorized Agency, as determined by the Authorized Agency.

(d) If the Authorized Agency determines that Bid or Proposal security is or will be required, the Authorized Agency should not authorize Electronic Offers unless the Authorized Agency has another method for receipt of such security.

(2) **Rules Governing Electronic Procurements**. The Authorized Agency must conduct all portions of an electronic Procurement in accordance with these Division 247 Rules, unless otherwise set forth in this Rule.

(3) **Preliminary Matters**. As a condition of participation in an electronic Procurement, the Authorized Agency may require potential Contractors to register with the Authorized Agency before the date and time on which the Authorized Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Authorized Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) **Offer Process**. An Authorized Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Authorized Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Authorized Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Authorized Agency will first receive Electronic Offers, the Authorized Agency must begin to accept real time Electronic Offers on ORPIN or other Electronic Procurement System approved by the Chief Procurement Officer (for purposes of this Rule, collectively, ORPIN), and must continue to accept Electronic Offers in accordance with Subsection 5 of this Rule until the date and time specified by the Authorized Agency, after which the Authorized Agency will no longer accept Electronic Offers.

(5) **One-Time Receipt of All Electronic Offers**. When an Authorized Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Authorized Agency must receive the Electronic Offers in accordance with these Division 247 Rules.

(6) **Failure of the E-Procurement System**. In the event of a failure of ORPIN that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Authorized Agency may cancel the Procurement in accordance with OAR 125-247-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the ORPIN becomes available.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**125-247-0340**

**Reverse Auctions**

(1) If the Authorized Agency desires to conduct a Reverse Auction as defined in OAR 125-247-0288, the Authorized Agency must follow the policy of the Department. The requirements of OAR 125-247-0288 apply to Reverse Auctions. In the event of conflict or ambiguity, the more specific requirements of OAR 125-247-0288 take precedence over the more general requirements of this Rule.

(2) **Multiple Receipts of Offers during a Period of Time**. When the Authorized Agency specifies that Persons may submit multiple Electronic Offers during a period of time, the Authorized Agency must accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(a) Following receipt of the first Electronic Offer after the day and time the Authorized Agency first receives Electronic Offers, the Authorized Agency must give notice to the initial Bidders and update on a real time basis:

(A) The prices of the other Bidders or the price of the most competitive Bidder;

(B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");

(C) The scores of the Bidders if the Authorized Agency chooses to use a scoring model that weighs non-price factors in addition to price; or

(D) Any combination of (A), (B) and (C) above. At any time before the date and time after which the Authorized Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(b) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Authorized Agency first accepts Electronic Offers.

(c) A Person may withdraw an Electronic Offer only in compliance with these division 247 Rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

**125-247-0400**

**Offer Preparation**

See OAR 137-047-0400.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0400**

**Offer Preparation**

(1) Instructions. An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) Forms. An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) Documents. An Offeror shall provide the Contracting Agency with all documents and Descriptive Literature required by the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

**125-247-0410**

**Offer Submission**

See OAR 137-047-0410.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0410**

**Offer Submission**

(1) Product Samples and Descriptive Literature. A Contracting Agency may require Product Samples or Descriptive Literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of Product Samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) Identification of Offers:

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) Receipt of Offers. The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

**125-247-0420**

**Pre-Offer Conferences**

See OAR 137-047-0420.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0420**

**Pre-Offer Conferences**

(1) Purpose. A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) Required Attendance. The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) Scheduled Time. If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) Statements Not Binding. Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) Agency Announcement. The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with OAR 137-047-0255(2) or 137-047-0260(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**125-247-0430**

**Addenda to Solicitation Document**

(1) **Issuance; Receipt**. The Authorized Agency may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Authorized Agency otherwise specifies in the Addenda.

(2) **Notice and Distribution**. The Authorized Agency must notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document must specify how the Authorized Agency will provide notice of Addenda and how the Authorized Agency will make the Addenda available before Closing, and at each subsequent step or Phase of evaluation if the Authorized Agency will engage in a Multistep Competitive Sealed Bidding process in accordance with OAR 125-247-0255, or a Multi-tiered or Multistep Competitive Sealed Proposals process in accordance with 125-247-0260.

(3) **Timelines; Extensions**.

(a) The Authorized Agency must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Authorized Agency may extend the Closing if the Authorized Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the Authorized Agency must not issue Addenda less than 3 Business Days before the Closing unless the Addendum also extends the Closing.

(b) Despite Subsection (3)(a) of this Rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any step or Phase of competition under a Multistep Sealed Bidding or Multistep Sealed Proposals, issued in accordance with OAR 125-247-0255 or 125-247-0260, must be issued no fewer than five (5) Days before the beginning of that step or Phase of competition, unless the Authorized Agency determines that a shorter period is sufficient to allow the Offerors to prepare for that step or Phase of competition. The Authorized Agency must document the factors it considered in making that determination, which may include, without limitation, the Scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next step or Phase of competition favors or disfavors any particular Proposer or Proposers.

(4) **Request for Change or Protest**. Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in OAR 125-247-0730, by the close of the Authorized Agency’s next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under 125-247-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with 125-247-0730, then the Authorized Agency may only consider an Offeror’s request for change or protest to the Addendum, and the Authorized Agency must not consider a request for change or protest to matters not added or modified by the Addendum. Despite any provision of this subsection (4) of this Rule, an Authorized Agency is not required to provide a protest period for Addenda issued after initial Closing during a or multistep Procurement Process conducted according to ORS 279B.055 or 279B.060 and their respective rules.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

**COMMENTARY ON OAR 125-247-0430: Revised July 1, 2008**

Adapted OAR 137-047-0430, except that a portion of OAR 137-047-0430(2) was moved to and adapted for this Commentary, as follows:

**Section (2).** The following is an example of how an Authorized Agency may specify how it will provide notice of Addenda: “Authorized Agency will not mail notice of Addenda, but will publish notice of any Addenda on ORPIN. Addenda may be downloaded off ORPIN. Offerors should frequently check ORPIN until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing.” OAR 137-047-0430(2).

**125-247-0440**

**Pre-Closing Modification or Withdrawal of Offers**

See OAR 137-047-0440.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0440**

**Pre-Closing Modification or Withdrawal of Offers**

(1) Modifications. An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with OAR 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Contracting Agency.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection (2)(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) Documentation. The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**125-247-0450**

**Receipt, Opening, and Recording of Offers**

See OAR 137-047-0450.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0450**

**Receipt, Opening, and Recording of Offers; Confidentiality of Offers**

(1) Receipt. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) Opening and Recording. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to OAR 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

**125-247-0460**

**Late Offers, Late Withdrawals, and Late Modifications**

See OAR 137-047-0460.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0460**

**Late Offers, Late Withdrawals and Late Modifications**

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in OAR 137-047-0470 or 137-047-0261.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12

**125-247-0470**

**Mistakes**

See OAR 137-047-0470.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0470**

**Mistakes**

(1) Generally. To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) Contracting Agency Treatment of Mistakes. A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example, a missing unit price may be established by dividing the total price for the units by the quantity of units for that item, or a missing or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) Rejection for Mistakes. The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) Identification of Mistakes after Award. The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

**125-247-0480**

**Time for Authorized Agency Acceptance**

See OAR 137-047-0480.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0480**

**Time for Agency Acceptance**

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**125-247-0490**

**Extension of Time for Acceptance of Offer**

See OAR 137-047-0490.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0490**

**Extension of Time for Acceptance of Offer**

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**125-247-0500**

**Responsibility of Offerors**

(1) **Determination**. Before awarding a Contract, the Authorized Agency must determine that the Offeror submitting the lowest Bid or Proposal or most Advantageous Offer is Responsible. The Authorized Agency must use the standards set forth in ORS 279B.110 and OAR 125-247-0640 to determine if an Offeror is Responsible. In the event an Authorized Agency determines an Offeror is not Responsible, it must prepare a Written determination of non-Responsibility as required by ORS 279B.110 and must reject the Offer.

(2) **Independent Contractor Status, Tax Compliance, Pay Equity Certificate and Requirements to Transact Business in Oregon**. For these responsibilities of Offerors, see OAR 125-246-0330.

(3) **Life Cycle Costing**. See OAR 125-247-0170.

(4) **Record of Performance and Integrity**. Authorized Agencies must comply with ORS 279B.110.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

**COMMENTARY ON OAR 125-247-0500:** **Revised January 1, 2010**

Adapted OAR 137-047-0500, except Sections (2) and (3)

**125-247-0525**

**Qualified Products Lists**

See OAR 137-047-0525.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085, 279B.115
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0525**

**Qualified Products Lists**

A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**125-247-0550**

**Prequalification of Prospective Offerors, Pre-negotiation of Contract Terms and Conditions, and Request for Qualifications (RFQ)**

(1) **Prequalification of Prospective Offerors**. An Authorized Agency may prequalify prospective Offerors according to ORS 279B.120 and 279B.125. Despite the prohibition against revocation of prequalification in ORS 279B.120(3), an Authorized Agency may determine that a prequalified Offeror is not Responsible before Contract Award.

(2) **Pre-negotiation of Contract Terms and Conditions**. An Authorized Agency may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in Section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of the Authorized Agency and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. An Authorized Agency may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When an Authorized Agency has pre-negotiated different terms and conditions with Proposers or when permitted, Proposers offer different terms and conditions, an Authorized Agency may consider the terms and conditions in the Proposal evaluation process.

(3) **Request for Qualifications (RFQ)**. For purposes of this Section, an RFQ may be used without the RFQ constituting a Prequalification according to Section (1) of this Rule, if the Authorized Agency establishes the RFQ to determine whether competition exists to perform the needed services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, before issuing a Request for Proposals (RFP). If an Authorized Agency establishes a closed, exclusive, or binding list of qualified Contractors, then the Authorized Agency must comply with Section (1) of this Rule. The Authorized Agency is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

(a) At a minimum, the RFQ must describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the Authorized Agency to evaluate Contractor qualifications.

(b) A qualifications pre-submission meeting, voluntary or mandatory, may be held for all interested Contractors to discuss the proposed services. The RFQ must include the date, time and place of the meeting(s).

(c) Unless the RFQ establishes that competition does not exist or unless the Solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications must receive a notice, or other materials as appropriate, in addition to the general public, of any required services and have an opportunity to submit a proposal in response to an Authorized Agency's subsequent RFP.

(d) All RFQs must:

(A) Be in Writing;

(B) Be posted on ORPIN;

(C) Provide that the Authorized Agency may, at any time during the Solicitation process, reject any or all Proposals or cancel the Solicitation without liability if it is in the public interest to do so; and

(D) Provide that the Authorized Agency is not responsible for any costs of any proposers incurred while submitting Proposals, and that all Proposers who respond to Solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(e) In accordance with ORS 200.035, and applicable related Department statewide policy, a State Contracting Agency, as defined in ORS 279A.010, must provide Timely Notice, in Writing, to the Governor’s Policy Advisor for Economic and Business Equity of each Solicitation and contracting opportunity exceeding $10,000. As used in ORS 200.035 and this Rule, “Timely Notice” means at the time the State Contracting Agency advertises or solicits Bids or Proposals and at the time the State Contracting Agency publicly releases the Contract.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.015, 279B.050-279B.085, 279B.120, 279B.125
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2016, f. 12-22-16, cert. ef. 1-1-17; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**COMMENTARY ON OAR 125-247-0550**

Adapted OAR 137-047-0550, except Section (2)

**125-247-0575**

**Debarment of Prospective Offerors**

(1) See OAR 137-047-0575.

(2) Regardless of OAR 137-047-0575, the Chief Procurement Officer is the Contracting Agency and acts on behalf of the Director of the Department under ORS 279B.130 and 279B.425.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085, 279B.130
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0575**

**Debarment of Prospective Offerors**

(1) Generally. A Contracting Agency may Debar prospective Offerors for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) Responsibility. Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) Imputed Knowledge. A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) Limited Participation. A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.130
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08

**COMMENTARY ON OAR 125-247-0575:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rule OAR 137-047-0575 and supplemented with Section (2).

**125-247-0600**

**Offer Evaluation and Award**

(1) **Authorized Agency Evaluation**. The Authorized Agency must evaluate Offers only as set forth in the Solicitation Document, according to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Authorized Agency must not evaluate Offers using any other requirement or criterion.

(a) **Evaluation of Bids**.

(A) **Nonresident Bidders**. In determining the lowest Responsive Bid, the Authorized Agency must apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 125-246-0310 for nonresident Bidders.

(B) **Public Printing**. The Authorized Agency must, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210.

(C) **Award When Bids are Identical**. If the Authorized Agency determines that one or more Bids are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(b) **Evaluation of Proposals**.

(A) **Award When Proposals are Identical**. If the Authorized Agency determines that one or more Proposals are identical under OAR 125-246-0300, the Authorized Agency must award a Contract in accordance with the procedures set forth in OAR 125-246-0300.

(B) **Public Printing**. The Authorized Agency must for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) **Recycled Materials**. When procuring Goods, the Authorized Agency must give preference for Recycled Materials as set forth in ORS 279A.125 and OAR 125-246-0322.

(2) **Clarification of Bids or Proposals**. After the Bid Opening, an Authorized Agency may conduct Discussions with apparent Responsive Offerors for the purpose of clarification and to assure full understanding of the Bids or Proposals. All Bids or Proposals, at the Authorized Agency's sole discretion, needing clarification must be afforded such an opportunity. The Authorized Agency must document clarification of any Bidder's Bid in the Procurement File in accordance with OAR 125-246-0556.

(3) **Negotiations Prohibited or Allowed**.

(a) **Prohibition in Competitive Sealed Bidding**. An Authorized Agency must not negotiate with any Bidder in a competitive sealed bidding according to ORS 279B.055 and related Rule. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-247-0805. An Authorized Agency may conduct Discussions in accordance with OAR 125-247-0255.

(b) **Allowance in Other Procurement Methods**. An Authorized Agency may conduct Discussions or Negotiations with one or more Offerors in Competitive Sealed Proposals, Small Procurements, Intermediate Procurements, Emergency Procurements if applicable, and Special Procurements if applicable, in accordance with ORS 279B.060(7) and (8), OAR 125-247-0260, 125-247-0270, 125-247-0287, and 125-247-0288. To the extent practical, an Authorized Agency must negotiate in Sole-Source Procurements in accordance with OAR 125-247-0275. After Award of the Contract, the Authorized Agency and Contractor may only modify the Contract in accordance with OAR 125-247-0805.

(c) **Other Procurements**. This Section (3) does not apply to Small Procurements, Emergency Procurements, or Special Procurements which do not use Solicitations.

(4) **Award**.

(a) **General**. If awarded, the Authorized Agency must award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Authorized Agency may award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) **Multiple Items**. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with the Award based on individual line item, group total of certain items, a "market basket" of items representative of the Authorized Agency's expected purchases, or grand total of all items.

(c) **Multiple Awards; Bids**.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. A multiple Award may be made if the Award to two or more Bidders is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, skills, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be awarded for any Invitation to Bid must not preclude the Authorized Agency from awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Authorized Agency must specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services. This criteria may include consideration and evaluation of the terms and conditions agreed to by the Contractors.

(d) **Multiple Awards; Proposals**.

(A) Despite Subsection 4(a) of this Rule, an Authorized Agency may award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, skills, or other factors deemed significant by the Authorized Agency. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Proposers that multiple Contracts may be awarded for any Request for Proposals must not preclude the Authorized Agency from awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Authorized Agency must specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Supplies and Services. This criteria may include consideration and evaluation of the terms and conditions agreed to by the Contractors.

(e) **Partial Awards**. If after evaluation of Offers, the Authorized Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Authorized Agency may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Authorized Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) **All or None Offers**. An Authorized Agency may award all or no Offers if the evaluation shows an all or no Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

(g) **Life Cycle Costing**. The Authorized Agency must follow OAR 125-247-0170.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**COMMENTARY ON OAR 125-247-0600: Revised December 1, 2012**

Adapted OAR 137-047-0600, except for OAR 137-047-0600(4)(c), (d) and (g)

**125-247-0610**

**Notice of Intent to Award**

(1) **Notice of Intent to Award**. The Authorized Agency must provide Written notice of its intent to award a Contract resulting from a formal Invitation to Bid or Request for Proposal to all Offerors according to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Authorized Agency determines that circumstances justify prompt execution of the Contract, in which case the Authorized Agency may provide a shorter notice period. The Authorized Agency must document the specific reasons for the shorter notice period in the Procurement File in accordance with OAR 125-246-0556.

(2) **Finality**. The Authorized Agency's Award must not be final until the later of the following:

(a) The expiration of the protest period provided according to OAR 125-247-0740; or

(b) The Authorized Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

(3) The Authorized Agency may provide this notice through any reasonable means and, if functionality exists, through ORPIN in accordance with OAR 125-246-0500.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.085, 279B.135
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

**COMMENTARY ON OAR 125-247-0610: Revised January 1, 2010**

Adapted OAR 137-047-0610, except OAR 125-247-0610(3)

**125-247-0620**

**Documentation of Award**

See OAR 137-047-0620.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050 - 279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0620**

**Documentation of Award**

(1) Basis of Award. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.

(2) Contents of Award Record. The Contracting Agency's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and OAR 137-047-0261, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

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

**125-247-0630**

**Availability of Award Decisions**

(1) **Contract Documents**. To the extent required by the Solicitation Document, the Authorized Agency must deliver to the successful Offeror a Contract, a Signed Purchase Order, Price Agreement, or other Contract documents as applicable.

(2) **Availability of Award Decisions**. A Person may obtain tabulations of awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Authorized Agency a Written request accompanied by payment. The requesting Person must provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Authorized Agency may make available tabulations of Bids and Proposals through ORPIN or the Authorized Agency's website.

(3) **Availability of Procurement Files**. After the notice of intent to award, the Authorized Agency must make Procurement Files available in accordance with applicable law, except where applicable law requires the Authorized Agency to make information contained in the Procurement Files available before any notice of intent to award. See the Public Records Law. A protestor of a Competitive Range in accordance with OAR 125-247-0260 is not entitled to obtain or review the Procurement Files related to the protest until after the notice of intent to award. See OAR 125-247-0720.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10

**125-247-0640**

**Rejection of an Offer**

See 137-047-0640.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

**137-047-0640**

**Rejection of an Offer**

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency’s finding that the Offer:

(A) Is contingent on the Contracting Agency’s acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency’s finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified under OAR 137-046-0210(3) (Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine, under ORS 279B.110, that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror’s control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror’s record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror’s performance, the Contracting Agency should determine whether the Offeror’s deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror’s performance on both private and public contracts in determining the Offeror’s record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file as required by ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror’s performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror’s integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror’s performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file as required by 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency;

(v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state;

(vi) In State Contracting Agency procurements, possesses an unexpired certificate, issued by the Oregon Department of Administrative Services under 2015 Oregon Laws, chapter 454, section 2, if the Offeror employs 50 or more full-time workers at the time of the Closing and the estimated Contract Price exceeds $500,000; and

(vii) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility on any available information, or may find the Offeror non-Responsible.

(2) For the purposes of subparagraph (1)(c)(F)(v) of this rule:

(a) The period for which the Offeror must attest that it complied with the applicable tax laws must extend no fewer than six years into the past from the date of the Closing.

(b) Tax laws include, but are not limited to, ORS 305.620, ORS chapters 316, 317 and 318, any tax provisions imposed by a political subdivision that apply to the Offeror or to the performance of the Contract, and any rules and regulations that implement or enforce those tax laws.

(c) A Contracting Agency may exercise discretion in determining whether a particular form of attesting to compliance with the tax laws is “credible and convenient” under ORS 279B.110(2)(e), taking into consideration the circumstances in which the attestation is made and the consequences of making a false attestation. Therefore, a Contracting Agency may accept forms of attestation that range from a notarized statement to a less formal document that records the Offeror’s attestation. However, State Contracting Agencies may not accept the certificate of compliance with tax laws required by ORS 305.385 unless that certificate embraces, in addition to the tax laws described in ORS 305.380, the tax laws of political subdivisions.

(3) Form of Business Entity. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person’s officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100, 279B.110, OL 2015, ch 454 (SB 491), OL 2015, ch 539 (SB 675)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

**125-247-0650**

**Rejection of All Offers**

See OAR 137-047-0650.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0650**

**Rejection of All Offers**

(1) Rejection. A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) Criteria. The Contracting Agency may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the Procurement or solicitation in accordance with OAR 137-047-0660; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**125-247-0660**

**Cancellation of Procurement or Solicitation**

See OAR 137-047-0660.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0660**

**Cancellation of Procurement or Solicitation**

(1) Cancellation in the Public Interest. A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) Notice of Cancellation Before Opening. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same manner that the Contracting Agency initially provided notice of the solicitation. Such notice of cancellation shall:

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) Notice of Cancellation After Opening. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**125-247-0670**

**Disposition of Offers if Solicitation Cancelled**

See OAR 137-047-0670.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.085
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12

**137-047-0670**

**Disposition of Offers if Procurement or Solicitation Canceled**

(1) Prior to Opening. If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency’s Electronic Procurement System or information technology system.

(2) After Opening. If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:

(a) May return Proposals in accordance with ORS 279B.060(56)(c); and

(b) Shall keep Bids in the Procurement file.

(3) Rejection of All Offers. If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

**125-247-0690**

**Policy: Appearance of Contractor Advantage**

(1) As provided in ORS 279B.205 and consistent with 279A.015, specifications must seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying an Agency’s needs. Subject to 279B.405, the specification content must be determined in the sole discretion of the Agency.

(2) **Contractor Advantage; General**.

(a) **Policy**. As provided in ORS 279B.210, it is the policy of the State of Oregon to encourage the development of clear, precise and accurate Specifications in Solicitations for Public Contracts. To that end, in developing Specifications, Agencies may consult, under contract or otherwise, with technical experts, suppliers, prospective contractors and representatives of the industries with which the Agencies contract, as set forth in ORS 279B.210.

(b) **Application**. In the event of conflict or ambiguity arising from the general requirements of section (2) of this Rule and the specific requirements of section (3) of this Rule, the specific requirements take precedence over the general requirements.

(3) **Contractor Advantage; Services Contract; Exception**. An Authorized Agency must comply with ORS 279B.040, including but not limited to the following:

(a) **No Appearance of Contractor Advantage**. If an Agency enters into a contract with a contractor to advise or assist the Agency in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials (Solicitation Materials) related to a procurement (Procurement), the Agency may not accept an Offer from that contractor or its affiliate that is related to the Procurement, if a reasonable person would believe that, by giving the advice or assistance, the contractor or affiliate would have or would appear to have an advantage in the Procurement.

“**Affiliate**” means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a contractor described in this section.

(b) **Exception**.

(A) Before awarding a contract for the advice or assistance of a contractor described in subsection (3)(a), the Agency must request an exception from the State Chief Procurement Officer, if the Agency wishes to later accept an Offer from the Provider.

(B) The Agency’s request for the exception must include sufficient findings of fact and justifications that will enable the State Chief Procurement Officer to make an independent judgment.

(C) The State Chief Procurement Officer must determine whether:

(i) The Agency needs advice or assistance from a contractor to develop the Solicitation Materials;

(ii) Accepting an Offer from the contractor that gives the advice or assistance is the only practicable way in which the Agency can conduct the Procurement successfully; and

(iii) Approving the exception:

(I) Is unlikely to encourage favoritism in awarding public contracts or to substantially diminish competition for public contracts; and

(II) Is reasonably expected to result in substantial cost savings to the Agency; or the public or otherwise substantially promotes the public interest in a manner that could not be practicably realized by complying with the prohibition described in subsection (3)(a).

(D) If the State Chief Procurement Officer approves the Agency’s request, the State Chief Procurement Officer must prepare Written findings and justifications for the approval.

(E) If the State Chief Procurement Officer disapproves the Agency’s request, the State Chief Procurement Officer must:

(i) State the State Chief Procurement Officer’s reasons for the disapproval in a Written notice to the Agency, and

(ii) Indicate whether the disapproval extends only to the Agency’s acceptance of an Offer from a contractor described in Subsection (3)(a) or whether the State Chief Procurement Officer also disagrees with the Agency’s stated need for advice or assistance from a contractor.

(F) The State Chief Procurement Officer’s approval or disapproval is final.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.040, 279B.205 & 279B.210
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**125-247-0691**

**Brand Name or Equal Specification**

(1) **Applicability and Use**. This Rule applies to Specifications for a Solicitation or class of Solicitations. For a Solicitation or class of Solicitations under ORS 279B.060, 279B.065, 279B.070, 279B.085, or 279A.200–279A.225, as provided in 279B.215:

(a) A brand name or equal Specification may be used when the use of a brand name or equal Specification is advantageous to the Agency, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the Agency.

(b) The Agency is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

(c) Nothing in this Subsection may be construed as prohibiting an Agency from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the Agency.

(2) **Determination**. A brand name Specification may be prepared and used only if the Agency determines for a Solicitation or a class of Solicitations that only the identified brand name Specification will meet the needs of the Agency based on one or more of the following written determinations:

(a) That use of a brand name Specification is unlikely to encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;

(b) That use of a brand name Specification would result in substantial cost savings to the Agency;

(c) That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or

(d) That efficient utilization of existing Goods requires the acquisition of compatible Goods or Services.

(3) An Agency’s use of a brand name Specification may be subject to review only as provided in ORS 279B.405.

(4) **Single Manufacturer, Multiple Sellers**. An Authorized Agency may prepare and use a brand name or equal Specification for Supplies and Services available from only one manufacturer, but available through multiple sellers, if the Authorized Agency complies with Sections (1) and (2) of this Rule and the following requirements:

(a) If the total purchase is $10,000 or more but does not exceed $150,000 and Supplies and Services are not available under an existing Mandatory Use Contract, the Authorized Agency must obtain informal, competitive Quotes, Bids, or Proposals and document this process in the Procurement File according to ORS 279B.070 and OAR 125-247-0270;

(b) If the purchase exceeds $150,000, and the Supplies and Services are not available under an existing Price Agreement for information technology with competing products or a Mandatory Use Contract, an Authorized Agency must first request and obtain prior Written authorization from the State Chief Procurement Officer to proceed with the acquisition.

(5) **Single Manufacturer, Multiple Purchases**. If an Authorized Agency intends to make several purchases of brand name-specified Supplies and Services from a particular manufacturer or seller for a period not to exceed five (5) years, the Authorized Agency must so state this information in: the Procurement File; the Solicitation Document, if any; or a Public Notice of a solicitation on ORPIN. If the Authorized Agency estimates the total purchase amount to exceed $150,000, this estimate must also be stated in the Public Notice. This Section (5) does not apply to Department Price Agreements, also known as Mandatory Use Contracts.

(6) Nothing in this Rule exempts the Authorized Agency from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.

(7) All State Contracting Agencies must comply with ORS 200.035 and applicable related Department statewide policy, despite this Rule.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.215
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2016, f. 12-22-16, cert. ef. 1-1-17; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**125-247-0700**

**Protests and Judicial Review of Special Procurements**

(1) See OAR 137-047-0700.

(2) Regardless of OAR 137-047-0700, the Chief Procurement Officer is the Contract Review Authority for the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.400
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0700**

**Protests and Judicial Review of Special Procurements**

(1) Purpose. An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) Delivery. Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Authority Response. The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) Judicial Review. An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & 279B.400
Stats. Implemented: ORS 279B.400
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

**COMMENTARY ON OAR 125-247-0700:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rule OAR 137-047-0700 and supplemented with Section (2).

**125-247-0710**

**Protests and Judicial Review of Sole-Source Procurements**

(1) See OAR 137-047-0710.

(2) Regardless of OAR 137-047-0710, the Designated Procurement Officer of the Authorized Agency is the Contract Review Authority if the cumulative value of the Contract and amendments does not exceed $150,000.00. The Chief Procurement Officer is the Contract Review Authority if the cumulative value of the Contract and amendments exceeds $150,000.00.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.405
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0710**

**Protests and Judicial Review of Sole-Source Procurements**

(1) Purpose. For sole-source Procurements requiring public notice under OAR 137-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) Delivery. Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) Content of Protest. The Written protest must include:

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

(4) Contract Review Authority Response. The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.

(5) Judicial Review. Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.075
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**COMMENTARY ON OAR 125-247-0710:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rule OAR 137-047-0710 and supplemented with Section (2).

**125-247-0720**

**Protests and Judicial Review of Multiple-Tiered and Multistep Solicitations**

(1) See OAR 125-247-0720.

(2) Regardless of OAR 137-047-0720, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.405
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0720**

**Protests and Judicial Review of Multi-Tiered and Multistep Solicitations**

(1) Purpose. An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) Basis for Protest. An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the Contracting Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) Delivery. Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) Content of Protest. The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) Contracting Agency Response. The Contracting Agency shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under OAR 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under 137-047-0660.

(6) Judicial Review. Judicial review of the Contracting Agency's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**COMMENTARY ON OAR 125-247-0720:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rule OAR 137-047-0720 and supplemented with Section (2).

**125-247-0730**

**Protests and Judicial Review of Solicitations**

(1) **Purpose**. A prospective Offeror may protest the Procurement Process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). According to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Authorized Agency and exhaust all administrative remedies.

(2) **Delivery**. Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Authorized Agency not less than seven (7) Days prior to Closing.

(3) **Content of Protest**. In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest must include a statement of the desired changes to the Procurement Process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) **Authorized Agency Response**. The Authorized Agency may not consider a Prospective Offeror's Solicitation protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the Solicitation Document. The Authorized Agency must consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Authorized Agency must issue a Written disposition of the protest no less than three (3) business days before Bids, Proposals or Offers are due, unless a Written determination is made by the Authorized Agency that circumstances exist that require a shorter time limit, in accordance with the timeline set forth in ORS 279B.405(6). If the Authorized Agency upholds the protest, in whole or in part, the Authorized Agency may in its sole discretion either issue an Addendum reflecting its disposition under OAR 125-247-0430 or cancel the Procurement or Solicitation under OAR 125-247-0660.

(5) **Extension of Closing**. If the Authorized Agency receives a protest from a prospective Offeror in accordance with this Rule, the Authorized Agency may extend Closing if the Authorized Agency determines an extension is necessary to consider and respond to the protest.

(6) **Clarification**. Prior to the deadline for submitting a protest, a prospective Offeror may request that the Authorized Agency clarify any provision of the Solicitation Document. The Authorized Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Authorized Agency unless the Authorized Agency amends the Solicitation Document by Addendum.

(7) **Judicial Review**. Judicial review of the Authorized Agency's decision relating to a Solicitation protest must be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.405
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08

**COMMENTARY ON OAR 125-247-0730:** **Revised July 1, 2008**

Adapted OAR 137-047-0730, except for OAR 137-047-0730(1)(b)

**125-247-0731**

**Protests and Judicial Review of Qualified Products List Decisions**

(1) See OAR 137-047-0745.

(2) Regardless of OAR 137-047-0745, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.115
Hist.: DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0745**

**Protests and Judicial Review of Qualified Products List Decisions**

(1) Purpose. A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) Delivery. Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's goods from the qualified products list.

(3) Content of Protest. The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) Contracting Agency Response. The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's goods on the qualified products list.

(5) Judicial Review. Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.115
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

**COMMENTARY ON OAR 125-247-0731:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rule OAR 137-047-0745 and supplemented with Section (2).

**125-247-0740**

**Protests and Judicial Review of Contract Award**

(1) See OAR 137-047-0740.

(2) Regardless of OAR 137-047-0740, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.410 & 270B.415
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0740**

**Protests and Judicial Review of Contract Award**

(1) Purpose. An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision.

(2) Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after the Award of a Contract, or issuance of the notice of intent to Award the Contract, whichever occurs first.

(3) Content of Protest. An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).

(4) Contracting Agency Response. The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) Judicial Review. Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & 279B.410
Stats. Implemented: ORS 279B.410 & 279B.415
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06

**COMMENTARY ON OAR 125-247-0740:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rule OAR 137-047-0740 and supplemented with Section (2).

**125-247-0750**

**Judicial Review of Other Violations**

(1) See OAR 137-047-0750.

(2) Regardless of OAR 137-047-0750, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.420
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0750**

**Judicial Review of Other Violations**

Any violation of ORS Chapter 279A or 279B by a Contracting Agency for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in 279B.420.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.420
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**COMMENTARY ON OAR 125-247-0750:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rule OAR 137-047-0750 and supplemented with Section (2).

**125-247-0760**

**Review of Prequalification and Debarment Decisions**

(1) See OAR 137-047-0745.

(2) Regardless of OAR 137-047-0745, the Chief Procurement Officer is the Contracting Agency.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.425
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0760**

**Review of Prequalification and Debarment Decisions**

Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.425
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05

**COMMENTARY ON OAR 125-247-0760:** Revised December 1, 2012. Replaced Rule contents with a pointer to adopted Model Rule OAR 137-047-0760 and supplemented with Section (2).

**125-247-0805**

**Amendments to Contracts and Price Agreements**

(1) See OAR 137-047-0800.

(2) Regardless of OAR 137-047-0800, Authorized Agencies must comply with the following provisions:

(a) **Authority**. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts, except that Amendments to Ordering Instruments may be accepted by the action of the Provider in accordance with the terms and conditions of the Ordering Instruments. All Amendments must receive all required approvals before the Amendments become binding on the Authorized Agency and before any service may be performed or payment made, including but not limited to the Department of Justice legal sufficiency review according to ORS 291.047.

(b) **Approval**.

(A) For a Contract Awarded as an Intermediate Procurement pursuant to ORS 279B.070, if the cumulative value of the original Contract Price and all Amendments exceeds $150,000, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater, then the Authorized Agency must request and obtain the prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(B) For a Contract Awarded through Competitive Sealed Bidding pursuant to ORS 279B.055, or through Competitive Sealed Proposals pursuant to ORS 279B.060, if the cumulative value of the original Contract Price and all Amendments exceeds one hundred twenty-five percent (125%) of the original Contract Price, then the Authorized Agency must obtain the prior Written approval of the State Chief Procurement Officer or delegate.

(C) The Designated Procurement Officer or delegate, or the Chief Procurement Officer or delegate, must determine and document that the proposed Amendment:

(i) Is not a material change of the essential identity or main purpose of the Original Contract; and

(ii) Does not constitute a new undertaking that should result in a new Procurement. The determination and approval must be included in the Procurement File.

(c) **Original Contract**. The Original Contract was awarded either:

(A) According to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.080, 279B.085, or 279A.200 through 279A.220; or

(B) Other statutory law.

(d) **Price Agreements**. The Department or its delegate may amend a Price Agreement as permitted by the Price Agreement or applicable law.

(e) **Intermediate Procurement**. See OAR 125-247-0270.

(f) **Emergency Procurement**. See OAR 125-247-0280.

(g) **Small Procurement**. See OAR 125-247-0265.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 3-2018, f. 12-14-18 & cert. ef. 1-1-19

**137-047-0800**

**Amendments to Contracts and Price Agreements**

(1) Generally. A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.

(b) These Model Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract.

(C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years.

(2) Small or Intermediate Contract. A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to section (1) of this rule, provided that the total increase in Contract price does not exceed the amount set forth in OAR 137-047-0265 for small Procurements or 137-047-0270 for intermediate Procurements.

(3) Price Agreements. A Contracting Agency may amend a Price Agreement as follows:

(a) As permitted by the Price Agreement;

(b) If the circumstances set forth in ORS 279B.140(2) exist; or

(c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12

**125-247-0810**

**Termination of Price Agreements**

See OAR 137-047-0810.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070, 279A.140
Hist.: DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12

**137-047-0810**

**Termination of Price Agreements**

A Contracting Agency may terminate a Price Agreement as follows:

(1) As permitted by the Price Agreement;

(2) If the circumstances set forth in ORS 279B.140(2) exist; or

(3) As permitted by applicable law.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065 & 279B.140
Hist.: DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06