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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414  
DEPARTMENT OF EARLY LEARNING AND CARE

**FILED**

04/18/2024 1:34 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Adopts Procurement Rules for DELC

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/31/2024 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Crys O'Grady  
971-382-2114  
crys.ogradey@delc.oregon.gov

700 Summer Street NE  
#350  
Salem, OR 97301

Filed By:  
Crys O'Grady  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 05/22/2024

TIME: 5:00 PM - 6:00 PM

OFFICER: Crys O'Grady

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1610981522

SPECIAL INSTRUCTIONS:

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Crys O'Grady by email at [Crys.OGrady@delc.oregon.gov](mailto:Crys.OGrady@delc.oregon.gov).

NEED FOR THE RULE(S)

The Oregon Department of Early Learning and Care (DELC) is proposing to adopt procurement rules that outline the Department's procurement and contracting policies and procedures. These proposed rules codify the Department's current procurement procedures, which are guided by the Public Contracting Code and the Attorney General Model Rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Attorney General Model Rules: <https://www.doj.state.or.us/oregon-department-of-justice/client-resources/attorney-generals-model-public-contracting-rules-revisions/>

Oregon Procurement Manual: <https://www.oregon.gov/das/opm/pages/index.aspx>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

These proposed rules are not expected to affect racial equity in this state.

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FISCAL AND ECONOMIC IMPACT:

There are no fiscal or economic impacts identified in association with the anticipated adoption of these rules, because they codify current Department policy and procedure.

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COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) There are no anticipated adverse impacts for units of local governments and members of the public are not likely to be economically affected by the rule(s).

(2) No small businesses are likely to be impacted by the proposed rule changes.

(a) The entities impacted by these proposed rules will be entities that receive contracts and grants from DELC.

(b) There are no anticipated costs of compliance to small businesses for reporting, recordkeeping and administrative activities due to the adoption of these proposed rules, because this codifies current policy and procedure.

(c) There is no anticipated cost of compliance to small businesses for new equipment, supplies, additional staff, or additional training due to the adoption of these proposed rules, because this codifies current policy and procedure.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

DELC will convene a Rules Advisory Committee (RAC) with community partners from across the state, including organizations serving populations representing racial, ethnic, geographic, socioeconomic, and linguistic diversity, to inform the development of the administrative rules. The RAC will meet once on May 20, 2024 from 4-5PM.

DELC will seek additional public comments by posting drafts of the administrative rules on its website and seeking comments both in writing and through a public hearing on May 22, 2024 from 5-6PM.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

414-070-0000, 414-070-0005, 414-070-0010, 414-070-0100, 414-070-0200, 414-070-0300, 414-070-0310, 414-070-0320, 414-070-0330, 414-070-0340, 414-070-0350, 414-070-0360, 414-070-0370, 414-070-0380, 414-070-0390, 414-070-0400, 414-070-0410, 414-070-0420, 414-070-0430

ADOPT: 414-070-0000

RULE SUMMARY: OAR 414-070-0000 outlines the procurement and public contracting policies for DELC.

CHANGES TO RULE:

414-070-0000

Policies

(1) These Rules simplify, clarify and modernize Public Contracting pursuant to ORS 279A.015(1).¶

(2) These Rules provide a foundation for ethical and fair dealing in Public Contracting, designed to instill public confidence pursuant to ORS 279A.015(2).¶

(3) The promotion of efficient use of resources pursuant to ORS 279A.015(3) includes but is not limited to Sustainability. Pursuant to ORS 184.421, "Sustainability" means using, developing and protecting resources in a

manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives. ORS 184.421(1) sets forth the goals for the State of Oregon regarding Sustainability and provides that in conducting internal operations the Department must seek to achieve the following objectives:¶

(a) Department purchases should be made so as to serve the broad, long term financial interests of Oregonians, including ensuring that environmental, economic and societal improvements are made so as to enhance environmental, economic and societal well-being:¶

(b) Investments in facilities, equipment and durable goods should reflect the highest feasible efficiency and lowest life cycle costs:¶

(c) Investments and expenditures should help promote improvements in the efficient use of energy, water and resources:¶

(d) Department operations and purchases should help maintain vital and active downtown and main street communities:¶

(e) Department purchases should help support opportunities for economically distressed communities and historically underemployed people:¶

(f) Department operations should be conducted in ways that significantly increase the efficient use of energy, water and resources:¶

(g) Department operations and purchases should reflect the efficient use and reuse of resources and reduction of contaminants released into the environment.¶

(4) These Rules clearly identify and implement each of the legislatively mandated socioeconomic programs identified pursuant to ORS 279A.015(4).¶

(5) "Arriving at best value" pursuant to ORS 279A.015(5) means selecting a Provider based on a determination of which Providers' proposals offer the best trade-off between price and performance, in which quality is considered an integral performance factor. The selection may be based on evaluation factors including but not limited to:¶

(a) The total cost of ownership, including the cost of acquiring, operating, maintaining and supporting Supply and Services, Public Improvements, and Architectural, Engineering and Land Surveying and Related Services, or any combination thereof, over its projected lifetime:¶

(b) The technical merit of the Proposer's proposal; and¶

(c) The probability of the Proposer performing the requirements stated in the Solicitation on time, with high quality and in a manner that accomplishes the stated business objectives.¶

(6) The Department must conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Statutory/Other Authority: ORS 279A.065(5)(a), ORS 279A.050, 279A.070

Statutes/Other Implemented: ORS 279A.015

ADOPT: 414-070-0005

RULE SUMMARY: OAR 414-070-0005 outlines the procurement authority of DELC and designated staff within the Department.

CHANGES TO RULE:

#### 414-070-0005

##### Procurement Authority

(1) Pursuant to ORS 279A.050, the Department adopts these rules to supplement the DOJ Model Rules on general provisions related to public contracting as promulgated by the Attorney General effective as of January 1, 2024. These rules apply to the Department's exercise of procurement authority under ORS 279A.050. These rules supplement the rules contained in Chapter 137, Divisions, 45, 46, and 47. In the event of a conflict between such rules and these rules, these rules control.

(2) The Department must conduct all Procurements and administer the contracting for Supplies and Services; Architectural, Engineering and Land Surveying Services, and Related Services; and Public Improvements for the Agencies, unless delegated, according to ORS 279A.140 and 279C.105(1). Delegations of Authority in accordance with OAR 414-070-0010 do not relieve the Department of this responsibility.

(3) The Department and its Director are the Contracting Agency described in the Public Contracting Code and represent the Department. The Designated Procurement Director receives delegated Authority according to OAR 414-070-0010.

(4) Any person conducting a Procurement or administering a Contract for the Department, as defined in ORS 279A.010(1)(b), must have education, training, professional experience, or a combination thereof that, at a minimum, and in accordance with standards established by the Department of Administrative Services pursuant to ORS 279A.159 and rules promulgated thereunder, adequately prepares the person to:

(a) Develop specifications and develop or adapt solicitation documents for a Procurement;

(b) Read critically, understand, interpret and apply terms and conditions set forth in Public Contracts of the scope and nature for which the person is or will be responsible;

(c) Draft scopes of work, statements of work, contract amendments, change orders, insurance requirements, notices and other documents and communications that are necessary to conduct a Procurement or administer a Public Contract of the scope and nature for which the person is or will be responsible;

(d) Monitor a contractor's performance under a Public Contract to ensure that the contractor performs services, provides goods or supplies materials according to the schedule, pricing, specifications and terms and conditions set forth in the Public Contract;

(e) Manage relations between the Department and contractors so that contractors meet obligations to the Department and the contracting Department meets obligations to contractors;

(f) Recognize and investigate emerging disputes or other risks, unique requirements, unusual situations or other issues that arise in connection with a Procurement and formulate appropriate responses and resolutions, seeking advice from legal counsel, risk management personnel or other persons when necessary;

(g) Understand auditing requirements and procedures that apply to Procurements of the scope and nature for which the person is or will be responsible and organize and maintain appropriate documentation and administrative practices that meet the auditing requirements; and

(h) Follow regular business and office procedures, implement applicable Department policies and procedures and otherwise conduct Procurements or administer Public Contracts for the Department in accordance with best practices.

Statutory/Other Authority: ORS 279A.050

Statutes/Other Implemented: ORS 279A.050(1)(2)

RULE SUMMARY: OAR 414-070-0010 delegates the procurement Authority of the Department.

CHANGES TO RULE:

414-070-0010

Delegation of Authority

(1) Generally.¶

(a) Purpose. This rule delegates the procurement Authority of the Department (Authority). Only this rule delegates this Authority.¶

(b) Authority of the Department. The Department is specifically authorized by ORS 279A.050 to enter into a contract. ¶

(c) Authority of the Director. According to ORS 279A.140, the Department must conduct all Procurements, including Contract Administration, for the Department pursuant to its Authority under ORS 279A.050. Other Sections of the Code authorize specific actions by the Director of the Department. According to ORS 279A.050(1) and (2), this Authority of the Department vests only in the Director of the Department. The Director is ultimately responsible for the Procurement of the Department.¶

(2) Delegation to Individuals in the Department.¶

(a) The Director of the Department delegates Authority to the Designated Procurement Director of the Department. The Designated Procurement Director of the Department may subdelegate the Authority to execute Contracts, as described in subsection (2)(b)(F), to other individuals within their respective Department Agency, provided this subdelegation is in accordance with a Written alternative subdelegation plan, maintained on file with the Department's Designated Procurement Director. Each individual in this chain of delegation remains responsible for the exercise of Authority by that individual's subdelegates, and subdelegation does not waive this responsibility.¶

(b) Duties and Responsibilities of Designated Procurement Director. The Authority, duties and responsibilities of the Designated Procurement Director, according to (2)(a)(A), are as follows:¶

(A) Serve as the exclusive supervisor and manager of the Department's Procurement system:¶

(B) Conduct, supervise and manage the Procurement and the Procurement Process for the Department in accordance with the Code and these Rules, except for those Procurements conducted by a delegatee to whom the Designated Procurement Director has delegated Authority:¶

(C) Prepare or monitor the use of Specifications or statements of work for all Procurements of the Department:¶

(D) Issue Solicitations and implement other non-Solicitation methods for all Procurements of the Department in accordance with the Code and these rules:¶

(E) Award Contracts only as authorized in accordance with this rule:¶

(F) Execute Contracts, which means causing the signing of Contracts and performance of all necessary formalities to bring the Contracts into their final, legally enforceable forms. If the Designated Procurement Director is unable to make a Commitment of Funds as described in OAR 414-070-0010 then the head of the Department may follow an alternative subdelegation plan in accordance with Subsection (2)(a)(B)(i).¶

(G) Comply with the reporting requirements and the training and certification requirements of the Code, these rules, and Department policies:¶

(H) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contracts, Contract compliance, spend, Delegations, Special Procurements, exemptions, and exceptions. Monitoring Contract development, awards, and compliance applies to all Delegations:¶

(I) Based upon the monitoring described in subsection (2)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing; and¶

(J) Conduct Cost Analyses, approve Feasibility Determinations and Exceptions, and otherwise comply with¶

(c) Delegation by Rule Based Upon Thresholds. By this rule, the Director of the Department delegates Authority, to the Department's procurement staff subject to section (2)(a)(A) and (B), for the following Procurements, including Contract Administration:¶

(A) Small Procurements of Supplies and Services up to and including the Threshold of \$25,000, according to ORS 279B.065 and related rules:¶

(B) Procurements of Supplies and Services greater than \$25,000 and not exceeding \$250,000, and Amendments of Contracts resulting from these Procurements, according to ORS 279B.070 and any related policy:¶

(C) Informal Selection Procedures of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services according to ORS 279C.110 provided that the Authorized Agency follows the requirements as set forth in the policy of the Department:¶

(D) Competitive Quotes for Public Improvements estimated not to exceed \$100,000, provided that the

Authorized Agency follows the requirements as set forth in the policy of the Department;¶  
(E) Competitively Sealed Bidding not exceeding \$250,000 and according to 137-047-0255; ¶  
(F) Competitively Sealed Proposals not exceeding \$250,000 and according to 137-017-0260;¶  
(G) Sole-Source Procurements not exceeding \$250,000 and according to ORS 279B.075 and OAR 414-070-0340;¶  
(H) Special Procurements in accordance with OAR 137-047-0285 not exceeding \$250,000. This is the Authority to use the Special Procurement. Approval of the Special Procurement method must be requested from the State Chief Procurement Officer pursuant to OAR 125-247-0287.¶  
(I) Contract Administration as follows:¶  
(i) For Contracts and Ordering Instruments authorized according to this section (2)(c) and (d), the Contract Administration of these Public Contracts and Ordering Instruments, including but not limited to: appropriate payment approvals, ordering in accordance with the terms of Department Price Agreements, and the oversight of the Provider(s); but excluding the Contract Administration described in Subsection (v) below;¶  
(ii) The daily or routine Contract Administration of Ordering Instruments placed against Department of Administrative Services Price Agreements and Contracts procured by the Department. This daily or routine Contract Administration includes but is not limited to: appropriate payment approvals, ordering in accordance with the terms of Department of Administrative Services Price Agreements, and the oversight of the Provider(s);¶  
(iii) Activities specified in Writing by the Department's Designated Procurement Director or delegatee;¶  
(iv) Activities specified in a related policy of the Department; and¶  
(v) Despite subsection (2)(c)(L)(i) through (iv) above, this Delegation by subsection (2)(c)(L) does not include:¶  
(I) The Contract Administration of Department of Administrative Services Price Agreements; or¶  
(II) For Contracts procured by the Department of Administrative Services on behalf of the Department, Amendments when the amended value of Contract exceeds \$250,000; and terminations of such Contracts when the amended value of such Contract exceeds \$250,000.¶  
(vi) A statewide Department of Administrative Services Price Agreement should clearly state what, if any, threshold limitation applies to the delegated Authority to use the Price Agreement. ¶  
(d) Delegation by rule Based Upon Type. By this rule, the Director of the Department delegates Authority to the Department's procurement staff subject to section (2)(a) and (B), for the following Procurements, including Contract Administration:¶  
(A) Emergency Procurements, in accordance with ORS 279B.080, 279C.335(5), 137-047-0280, or related rules;¶  
(B) One-time, nonrepetitive Joint Cooperative Procurements in accordance with 137-046-0430 provided that:¶  
(i) No such Procurement results in a Permissive Cooperative Procurement that is open to any Department outside of those Departments jointly named in the original Procurement;¶  
(ii) No such Procurement of Supplies and Services exceeds the Threshold of \$250,000, including all Amendments, according to 137-047-0800;¶  
(iii) The Department must follow any related policy of the Department of Administrative Services.¶  
(C) Federal program Procurements not exceeding \$250,000 or according to a delegation agreement with the State Chief Procurement Officer, and in accordance with ORS 279A.180 and related rules;¶  
(D) Brand Name Specification Determinations for Solicitations in accordance with OAR 125-247-0691; and¶  
(E) Brand Name Specification Determinations for Sole Source Procurements not exceeding \$250,000 and according to OAR 414-070-0350.¶  
(F) Buy Decision in accordance with OAR 414-070-0200. The Department's delegated Authority to use each Priority Source in the Buy Decision is not to exceed \$250,000.¶  
(G) Maintain a file of Written subdelegation Authority granted and revoked under these Rules in accordance with the law;¶  
(H) Provide guidance and leadership on Procurement matters to Agencies and their employees;¶  
(I) Establish standards of required education, training, or experience and provide training and instruction opportunities to assure Department staff and Agency staff are equipped with necessary knowledge and skills to comply with requirements of the Public Contracting Code, Rules, and Department policy related to Procurement;¶  
(J) Monitor sourcing decisions, Procurements, development of Contracts, awarded Contract, Contract compliance, spend, Delegations, Special Procurements, exemptions, and exceptions. Report these matters to the Authorized Agency and Director as appropriate. Monitoring Contract development, awards, and compliance applies to all Delegations;¶  
(K) Based upon monitoring described in subsection (3)(b)(H), determine opportunities, establish targets, and utilize methods according to ORS 279A.200 through 279A.220 and 279B.055 through 279B.085 to optimize savings consistent with strategic sourcing.¶  
(L) Appoint procurement advisory committees to assist with Specifications, procurement decisions, and structural change that can take full advantage of evolving procurement methods as they emerge within various industries,

while preserving competition according to ORS 279A.015.

Statutory/Other Authority: ORS 279A.050, ORS 279A.140, ORS 279A.075

Statutes/Other Implemented: ORS 279A.050, ORS 279A.140, ORS 279A.075

ADOPT: 414-070-0100

RULE SUMMARY: OAR 414-070-0100 outlines the requirements for the Electronic Procurement System used by the Department for procurement purposes.

CHANGES TO RULE:

414-070-0100

Electronic Procurement System (OregonBuys)

(1) The Electronic Procurement System, known as OregonBuys, an Internet-based, on-line system, is the official publication forum for state Procurement notices and advertisements, as functionality allows, by the Department.

(2) The Department must use OregonBuys or other Electronic Procurement System approved by the Designated Procurement Director to comply with the reporting requirements for:

(a) Agreements under ORS 190 in accordance with OAR 414-070-0330; and

(b) Special Procurements in accordance with 137-047-0285 (12).

(3) In accordance with ORS 200.035, any applicable related Governor's Executive Order regarding Oregon Minority-owned, Women-owned, Veteran-owned, and Emerging Small Businesses, and applicable related Department of Administrative Services statewide policy, the Department must use OregonBuys or other Electronic Procurement System approved by the Designated Procurement Director, to:

(a) Give Timely Notice of the Department's intent to advertise or solicit Bids or Proposals; and

(b) Give Timely Notice when the Contract is awarded. As used in ORS 200.035 and this rule, "Timely Notice" means at the time the Department advertises or solicits Bids or Proposals and at the time the Department publicly releases the Contract.

Statutory/Other Authority: ORS 279A.065(5)(a), ORS 279A.070

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279A.065, ORS 279A.070, ORS 279A.140



ADOPT: 414-070-0200

RULE SUMMARY: OAR 414-070-0200 outlines the Department's process for buy decisions and methods of source selection.

CHANGES TO RULE:

#### 414-070-0200

##### 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). The Department 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. The Department 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 Department must procure through that higher Priority Source and may not elect to procure through a lower Priority Source.¶

(a) Oregon Forward Contractors (OFCs) (formerly known as Qualified Rehabilitation Facilities (QRFs). Procuring from OFCs assists individuals with disabilities through gainful employment (see ORS 279.835 through 279.855 and OAR 125-055-0005 through 125-055-0045).¶

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

(c) Statewide Department of Administrative Services Price Agreement. Economy and efficiency are promoted through volume and strategic purchases. To determine if a Price Agreement exists and whether it is mandatory, use OregonBuys or other Electronic Procurement System approved by the State Chief Procurement Officer 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 Department the Authority to use these Statewide Department Price Agreements. A statewide Price Agreement should clearly state what, if any, threshold limitation applies to the delegated Authority to use the Price Agreement. If a statewide Price Agreement is silent or unclear on the threshold limitation on the delegated Authority to use the Price Agreement, the Department's delegated Authority to use the Price Agreement is not to exceed \$250,000. ¶

(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 414-070-0330). The Department may elect to use an ORS 190 Agreement at any time.¶

(4) Open Market. If sections (2) and (3) do not apply, the Department 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. ¶

(5) Methods of Source Selection. The Department 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 137-047-0290 substantially uses a Competitive Sealed Bidding or Competitive Sealed Proposals method.

Statutory/Other Authority: ORS 279A.065(5)(a), ORS 279A.050, ORS 279A.070

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279B.050, ORS 279A.070

ADOPT: 414-070-0300

RULE SUMMARY: OAR 414-070-0300 outlines the Department's authority over contract administration and the role of a contract administrator.

CHANGES TO RULE:

414-070-0300

Contract Administration; General Provisions

(1) Authority. Procurements include Contract Administration. The Authority for the Department to conduct Contract Administration is found in OAR 414-070-0010 and is subject to the requirements of ORS 279A.159 and OAR 414-070-0005.¶

(2) Contract Administrator. The Department must appoint, in Writing, a Contract Administrator to represent the Department for each Contract. The Contract Administrator may delegate in Writing a portion of the Contract Administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each Contract.

Statutory/Other Authority: ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279A.050, ORS 279A.070, ORS 279A.065(5), ORS 279A.159

ADOPT: 414-070-0310

RULE SUMMARY: OAR 414-070-0310 outlines the required contents of the Department's procurement files.

CHANGES TO RULE:

#### 414-070-0310

##### Procurement Files

(1) Application. This rule applies to Procurement Files.¶

(2) Required Documentation. All Procurement Files must contain:¶

(a) All Written documents delivered to an Agency from the Department, whether the documents relate to approvals, revocations, orders, modifications, or other actions (Actions), related to the documents' subject matter and Action;¶

(b) An executed Contract, if awarded, and any Ordering Instruments and Amendments (collectively, Contract);¶

(c) The record of the actions used to develop and administer the Contract;¶

(d) A copy of the Solicitation, if any;¶

(e) The Contract Administrator and any delegates;¶

(f) Any required findings or statement of justification for the selection of the Provider and sourcing method according to ORS 279A.200 through 279A.220 (Cooperative Procurement); 279B.055 through 085 (seven methods for Supplies and Services); 279C.100 through 279C.125 (Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services); or ORS 279C.300 through 279C.450 (Public Improvements);¶

(g) Documentation of Contract Administration according to OAR 414-070-0300 and if required by the selected procurement method;¶

(A) A list of prospective Providers notified of any Solicitation;¶

(B) The method used to advertise or notify prospective Providers;¶

(C) A copy of each Offer that resulted in the Award of a Contract;¶

(D) The record of any Negotiation of the Statement of Work and results;¶

(E) All information describing how the Provider was selected, including the method and basis for awarding the Contract;¶

(F) A copy of the Request for Special Procurement, if any;¶

(G) Documentation related to Cooperative Procurements according to OAR 137-027-0290.¶

(3) Time Period. The Department must maintain Procurement Files, including all documentation, for a period in compliance with OAR 166-300-0015(8) and any other applicable laws.

Statutory/Other Authority: ORS 279A.050, ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279A.065(5), ORS 279A.070, ORS 279A.140

RULE SUMMARY: OAR 414-070-0320 applies to the reinstatement of expired or terminated Contracts (expired Contracts) and the retroactive approval of existing Contracts procured by the Department for Supplies and Services and for Architectural, Engineering and Land Surveying Services or Related Services.

CHANGES TO RULE:

414-070-0320

Reinstatement of Expired Contract; Retroactive Approval of Existing Contract

(1) Application. This rule applies to the reinstatement of expired or terminated Contracts (expired Contracts) and the retroactive approval of existing Contracts procured by the Department for Supplies and Services and for Architectural, Engineering and Land Surveying Services or Related Services ("Contracts"). This rule does not apply to mistakes that may occur in the solicitation process (see OAR 137-047-0470).

(2) Requirements to Reinstatement an Expired Contract.

(a) Before expiration, the Contract was properly signed by all parties;

(b) Then the signed Contract expired;

(c) The Department reinstates the Contract:

(A) To fulfill its term, up to the maximum time period provided in the Contract or Solicitation; or

(B) To complete one or more deliverable(s) included within the Contract's Scope at the time of its expiration;

(d) The Department documents in the Procurement File the deliverable(s) to be completed at the time of the expired Contract's reinstatement; and

(e) If the Contractor has performed work under the Contract, the reinstatement does not apply to payments made for work performed between the expiration of the Contract and the date of any reinstatement.

(3) Requirements to Retroactively Approve an Existing Contract.

(a) The Contract exists and has not expired;

(b) The Contract was signed by all parties except that the required approval of the Designated Procurement Director (DPD) was lacking;

(c) If the Contractor has performed work under the Contract, the retroactive approval does not apply to payments made for work performed between the start of the Contract and the date of any retroactive approval.

(4) Process. For either a reinstatement of an expired Contract or retroactive approval of an existing Contract, the Department must meet the following conditions:

(a) The Department must submit a Written request to the Department's Designated Procurement Director (DPD) if the Department is authorized under OAR 414-070-0010. If the Request is submitted to the DPD, the Department must follow its internal procedures.

(b) The Request must explain the following:

(A) The proposed reinstatement of the expired Contract or retroactive approval of the existing Contract.

(B) The background facts that led to the Request;

(C) The good faith basis for making the Request;

(D) The need for reinstatement of an expired Contract or retroactive approval of an existing Contract due to unforeseen or unavoidable conditions;

(E) The steps to prevent a reoccurrence. For examples:

(i) Improvement of Department's internal policies and procedures; and

(ii) Provision of new training or retraining; and

(F) Acknowledgement that the Request is in the best interest of the Department.

(c) Obtain all other approvals required for the Contract, including but not limited to: Attorney General's approval of legal sufficiency under ORS 291.047 or ratification under 291.049. The Department must obtain all other approvals required for the Contract before any reinstatement, extension of time under Subsection (6), or retroactive approval becomes binding.

(d) The DPD as described in Subsection (3)(a), must approve the Request.

(5) Effect of Approval.

(a) An approved reinstatement of an expired Contract makes the Contract in full force and effect, as if it had not expired.

(b) An approved retroactive approval of an existing Contract makes the Contract in full force and effect, as if it had been approved by the DPD when the Contract was formed.

(c) The DPD may create any related Contract documents to implement the reinstatement or retroactive approval.

(d) The Department may make an approved payment after any related Contract documents are signed by the necessary parties.

(6) Amendments of a Reinstated Contract.¶

(a) If the Department requests reinstatement of an expired Contract, the Request of the Department may also include a request to amend the reinstated Contract for time only. The DPD, as appropriate, may approve this Request, including the amendment.¶

(b) The Department may amend a reinstated or retroactively approved Contract for purposes other than time in accordance with OAR 137-047-0800.¶

(7) The Department may combine in one document a Reinstatement of a Contract in accordance with this rule, Retroactive Approvals of that Contract in accordance with OAR 414-070-0320, and its Amendment in accordance with 137-047-0800, as needed.

Statutory/Other Authority: ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279A.050, ORS 279A.070, ORS 279A.140

ADOPT: 414-070-0330

RULE SUMMARY: OAR 414-070-0330 outlines the requirements for intergovernmental agreements, including Interstate, International, Tribal, Interagency and Intergovernmental Agreements.

CHANGES TO RULE:

414-070-0330

ORS 190 Agreements (Intergovernmental)

(1) Reporting 190 Agreements through OregonBuys. If the Department enters into an agreement under ORS 190.110, 190.420 or 190.485, or an agreement under ORS 190.112 or under ORS 660.342, the Department must submit a summary of the agreement through OregonBuys or other Electronic Procurement System approved by the State Chief Procurement Officer within the 30-day period immediately following the effective date of the agreement. The summary must include the following information:¶

(a) Names of the parties to the agreement:¶

(b) Date of the agreement:¶

(c) Subject matter of the agreement; and¶

(d) The Department through which a person may obtain a copy of the agreement.¶

(2) Interstate and International Agreements. Following ORS 190, the Department may enter into Interstate and International Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.¶

(3) Tribal Agreements. Following ORS 190, the Department may enter into Tribal Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.¶

(4) Interagency and Intergovernmental Agreements. Following ORS 190, the Department may enter into Interagency and Intergovernmental Agreements through negotiation, direct award, direct appointment, or in any other manner that satisfies the legal requirements for such Agreements.¶

(5) All Interstate, International, Tribal, Interagency and Intergovernmental Agreements, when required, are subject to review and approval by the Attorney General.

Statutory/Other Authority: ORS 279A.065(5)(a), ORS 279A.070

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 190.110., ORS 190.112, ORS 190.420, ORS 190.485, ORS 279B.085, ORS 660.342, ORS 279A.070

ADOPT: 414-070-0340

RULE SUMMARY: OAR 414-070-0340 outlines the process for a Sole-Source Procurement according to the requirements of ORS 279B.075.

CHANGES TO RULE:

#### 414-070-0340

##### Sole-Source Procurements

(1) Generally. The Department may award a Contract without a competitive process through a Sole-Source Procurement according to the requirements of ORS 279B.075 and this rule. The Department 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 414-070-0340(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 Department "determines in writing" that the goods or services are "available from only one source." This means that the Department must conduct and document its market research before public notice described in Section (4) or (5).¶

(4) Contracts up to \$250,000. For all Contracts awarded through Sole-Source Procurements over \$25,000 and not exceeding \$250,000:¶

(a) The Department must place a public notice on OregonBuys or other Electronic Procurement System 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 Department 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 137-047-0710.¶

(d) The Department must obtain the Written approval of that Department's Designated Procurement Director or delegatee before the Department places a public notice on OregonBuys or other Electronic Procurement System approved by the DPD in accordance with this Section.¶

(5) Contracts over \$250,000. For all Contracts awarded through Sole-Source Procurements exceeding \$250,000:¶

(a) The Department must place a public notice on OregonBuys or other Electronic Procurement System in accordance with Subsections (4)(a)-(c); and¶

(b) The Department must obtain the Written approval of the Deputy Director of the Department before the Department places a public notice on OregonBuys or other Electronic Procurement System approved by the DPD in accordance with this Section.¶

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

(7) Protest. An Affected Person may protest the Department's determination that the Supplies and Services or class of Supplies and Services are available from only one source in accordance with OAR 137-047-0710.¶

(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 414-070-0350.¶

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

Statutory/Other Authority: ORS 279A.065(5)(a), ORS 279A.070

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279B.075





RULE SUMMARY: OAR 414-070-0350 outlines the process for a brand name or equal Specification .

CHANGES TO RULE:

414-070-0350

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 Department, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the Department.¶

(b) The Department 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 the Department from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the Department.¶

(2) Determination. A brand name Specification may be prepared and used only if the Department determines for a Solicitation or a class of Solicitations that only the identified brand name Specification will meet the needs of the Department, 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 Department;¶

(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) The Department's use of a brand name Specification may be subject to review only as provided in ORS 279B.405.¶

(4) Single Manufacturer, Multiple Sellers. The Department 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 Department complies with Sections (1) and (2) of this rule and the following requirements:¶

(a) If the total purchase is \$25,000 or more but does not exceed \$250,000 and Supplies and Services are not available under an existing Mandatory Use Contract, the Department must obtain informal, competitive Quotes, Bids, or Proposals and document this process in the Procurement File according to ORS 279B.070 and OAR 137-047-0270:¶

(b) If the purchase exceeds \$250,000, and the Supplies and Services are not available under an existing Price Agreement for information technology with competing products or a Mandatory Use Contract, the Department must first request and obtain prior Written authorization from the Designated Procurement Director to proceed with the acquisition(5) Single Manufacturer, Multiple Purchases. If the Department 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 Department must so state this information in: the Procurement File; the Solicitation Document, if any; or a Public Notice of a solicitation on OregonBuys or other Electronic Procurement System. If the Department estimates the total purchase amount to exceed \$250,000, this estimate must also be stated in the Public Notice. This Section (5) does not apply to Department of Administrative Services Price Agreements, also known as Mandatory Use Contracts.¶

(6) Nothing in this rule exempts the Department from obtaining the approval of the Attorney General for legal sufficiency according to ORS 291.047.¶

(7) The Department must comply with ORS 200.035 and applicable related Department statewide policy, despite this rule.

Statutory/Other Authority: ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279B.215, ORS 279A.070

ADOPT: 414-070-0360

RULE SUMMARY: OAR 414-070-0360 states that a procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065, or an Intermediate Procurement, pursuant to ORS 279B.070.

CHANGES TO RULE:

414-070-0360

Fragmentation

A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement, pursuant to ORS 279B.065, or an Intermediate Procurement, pursuant to ORS 279B.070.

Statutory/Other Authority: ORS 279A.065(5)(a), ORS 279A.070

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279A.015, ORS & 279B.065

ADOPT: 414-070-0370

RULE SUMMARY: OAR 414-070-0370 outlines the policy, applicability, and methods for selling or leasing supplies and services.

CHANGES TO RULE:

414-070-0370

Selling or Leasing Supplies and Services; Policy; Applicability; Methods

(1) Policy. A sound and responsive Public Contracting system, according to ORS 279A.015, may include purchasing, selling, and leasing activities. By definition, a Public Contract includes sales and leases by the Department according to ORS 279A.010(1)(z). The policies of ORS 279A.015 apply to public selling and leasing activities.

(2) Applicability. This rule applies to the sales and leases of Supplies and Services. This rule does not apply to residential property or the public selling activity of the Department, if the Department is specifically exempted from the Public Contracting Code by another provision of law or specifically authorized to conduct public selling or leasing activity by another provision of law. The sale or lease of Supplies and Services includes but is not limited to: concessions, software rights, and personal property.

(3) Methods. The Department must use a method, as feasible for selling or leasing, according to ORS 279B.055 through 279B.085. For the sale of Goods, the value of the sale transactions for the purpose of selecting the appropriate sourcing method must be based on the gross amount of receipts.

Statutory/Other Authority: ORS 279A.065(5)(a), ORS 279A.070

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279A.010(x), ORS 279A.070, ORS 279A.050(1)(2), ORS 279A.015

ADOPT: 414-070-0380

RULE SUMMARY: OAR 414-070-0380 outlines the process of the Department for the feasibility determination, cost analysis and Department report.

CHANGES TO RULE:

414-070-0380

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 Department and Contractor Data

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

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

(f) Section 7: Department Evaluation and Report

(2) Generally.

(a) Before conducting a Procurement for Services, the Department 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) If the Department has Authority, the Department must conduct the Cost Analysis for its Agency-specific Procurements;

(B) If the Department does not have Authority, the Department must conduct the Cost Analysis for its Agency-specific Procurements to be procured by the Department of Administrative Services;

(C) At the Department of Administrative Services's request, the Department must contribute to the Cost Analysis for statewide Price Agreement Procurements; and

(D) The Department of Administrative Services must conduct the Cost Analysis for statewide Price Agreement Procurements and Department of Administrative Services Procurements.

(c) This rule applies to a Procurement for Services that the Department 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. The Department must not fragment to avoid this threshold (see OAR 414-070-0360).

(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.

(3) Feasibility Determination. The Department may proceed with the Procurement of Services without conducting a Cost Analysis if the Department makes Written findings that one or more of the Special Circumstances described in subsection (3)(b) make the Department'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 Director or delegate (DPD) of the Department must approve the Feasibility Determination for its Procurement;

(B) If the Department does not have Authority, the DPD of the Department must approve the Feasibility Determination for the Department specific Procurement to be procured by the Department of Administrative Services on behalf of the Department;

(C) The State Chief Procurement Officer must approve the Feasibility Determination for a statewide Price Agreement Procurement or DAS-specific Procurement. At DAS' request, the Department's DPD must cooperate with the Department of Administrative Services 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 Department'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 Department. Special Circumstances may include, but are not limited to, the follow circumstances:

(A) Expertise. The DPD approves a determination that the Department lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the finding, the Department must compare the Department'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 Department receives a grant or other funds for use in a

Procurement require the Department to obtain Services through an independent contractor;¶

(C) Law Requirement. Other state or federal law requires the Department 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 Department 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 Department's existing personnel or persons the Department 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 Department'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 Department 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 414-070-0310.¶

(4) Cost Analysis: Estimation of Department and Contractor Data.¶

(a) Costs of Using Agency's Own Personnel and Resources. The Department must estimate the Department'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 Department 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 Department 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 Department'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 Department performed the Services.¶

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

(b) Costs a Potential Contractor Would Incur. The Department 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.¶

(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. The Department may consider other reliable information that

bears on the costs a potential Contractor would incur. For example, if in the recent past, the Department 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 Department may use that cost information in estimating the costs of current Services.¶

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

(a) The Department must compare:¶

(A) The Department's estimated costs under Subsection (4)(a) and¶

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

(b) Decision. If the Department'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 Department's costs for salaries or wages and benefits under subsection (4)(a)(A), then the Department may not conduct the Procurement.¶

(6) Decision: Comparison of Department and Contracting Costs.¶

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

(A) The Department's estimated costs under Subsection (4)(a) and¶

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

(b) Profit Included. Contracting Costs include the Department's estimate of Contractor's profit in addition to the estimate of Contractor's costs under subsection (4)(b). If the Department, in the reasonably near past, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable services, the Department may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the Department 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 Department 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 Department's Contracting Cost under this section is lower than the Department's cost under subsection (4)(a), the Department may conduct the Procurement. If the Department's Contracting Cost is higher than the Department's cost under subsection (4)(a), the Department 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 Department determines that it would incur less cost in providing the Services with its own personnel and resources, the Department may still conduct the Procurement if, at the time the Department intends to conduct the Procurement, the Department determines that it lacks personnel and resources to perform the Services within the time the Department requires the Services (Exception). When Department conducts a Procurement under this Exception, the Department must:¶

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

(B) Obtain the Written approval by the DPD of the Department of the Exception before the Department conducts the related 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 Department to hire personnel and obtain resources necessary to perform the Services that the Department procured under this Subsection (6)(d). The request must include a copy of the records that the Department provided to the Emergency Board under Subsection (6)(d)(C).¶

(7) When the Department 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, the Department must provide the State Chief Information Officer and the Legislative Fiscal Office with copies of the final cost analysis the Department prepared under ORS 279B.033 or the final determination the Department 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.

Statutory/Other Authority: ORS 279A.065(5)(a) &

Statutes/Other Implemented: ORS 279A.065(5)(a) &, ORS 279B.030, ORS 279A.070, ORS 279B.033, ORS 279B.036

ADOPT: 414-070-0390

RULE SUMMARY: OAR 414-070-0390 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 in accordance with ORS 279B.025.

CHANGES TO RULE:

414-070-0390

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 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 may consult with stakeholders to develop procedures or guidelines for the Procurement of Electronic Goods.

Statutory/Other Authority: ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279B.025, ORS 279A.070, ORS 279B.280

RULE SUMMARY: OAR 414-070-0400 outlines the Life Cycle Costing process, which 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).

CHANGES TO RULE:

414-070-0400

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, the Department does not award a Contract based solely on the lowest price, and a low Bid would include Life Cycle Costing.

(b) Planning. The Department 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. The Department 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 Department. 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 Department 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 Department 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 Department must evaluate Offers only as set forth in the Solicitation and in accordance with OAR 137-047-0600.

Statutory/Other Authority: ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279B.025, ORS 279A.070, ORS 279B.280

ADOPT: 414-070-0410

RULE SUMMARY: OAR 414-070-0410 outlines the process for approval of information technology or telecommunications procurements.

CHANGES TO RULE:

414-070-0410

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, the Department must obtain prior Written approval from the State Chief Information Officer. In addition, and regardless of the anticipated Contract Price the Department 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 414-070-0380 (7), the Department 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 Department prepared under ORS 279B.033 or the final determination the Department 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.

Statutory/Other Authority: ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 184.477, ORS 279A.070, ORS 279A.050, ORS 279A.075, ORS 279B.030

ADOPT: 414-070-0420

RULE SUMMARY: OAR 414-070-0420 outlines how the Department must follow policies regarding ethics in public contracting.

CHANGES TO RULE:

414-070-0420

Ethics in Public Contracting: Policy

These Rules supplement and do not replace ORS 244.010 through 244.400, for the purpose of applying the policy of ORS 244.010 to Oregon Public Contracting under the Public Contracting Code and these Rules. Oregon Public Contracting is a public trust. The Department and Contractors involved in Public Contracting must safeguard this public trust.

Statutory/Other Authority: ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279A.015, ORS 279A.070, ORS 279A.140

ADOPT: 414-070-0430

RULE SUMMARY: OAR 414-070-0430 describes how the Department must not develop Specifications that primarily benefit a Provider, directly or indirectly, to the detriment of the Department or the best interest of the State.

CHANGES TO RULE:

414-070-0430

Specifications

(1) The Department must not develop Specifications that primarily benefit a Provider, directly or indirectly, to the detriment of the Department or the best interest of the State.¶

(2) The Department must not develop Specifications that inhibit or tend to discourage Public Contracting under other public procurement laws or policies of the Department of Administrative Services.

Statutory/Other Authority: ORS 279A.065(5)(a)

Statutes/Other Implemented: ORS 279A.065(5)(a), ORS 279A.015, ORS 279A.070, ORS 279A.140