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CHAPTER 259

DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

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FILING CAPTION: DPSST Procurement Rule for Purchases Through Federal Programs, Correction to Dollar Amount Citations

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AMEND: 259-007-0150

NOTICE FILED DATE: 01/29/2024

RULE SUMMARY: OAR 259-007-0150 outlines procedures for the Department to follow when making purchases through federal programs. This amendment makes a correction. On October 1, 2023, the rule was changed to include dollar threshold changes made by Senate Bill 1047 (2023). After additional review of SB 1047 and Oregon Revised Statutes (ORS), the Department identified that the change to the \$10,000 threshold in OAR 259-007-0150 was made in error. SB 1047 raised the thresholds for procurement methods. It did not change ORS 200.035 and the threshold for required notice of the solicitation and award, which remains at \$10,000. The threshold changes found in Senate Bill 1047 do not apply to this rule. OAR 259-007-0150 has been corrected by amending the rule back to the original amount of \$10,000.

CHANGES TO RULE:

259-007-0150

Purchases Through Federal Programs

(1) DPSST may purchase goods or services under the federal programs identified in ORS 279A.180, without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085, provided that DPSST has federal authorization to purchase through the program and follows the procedures set forth in this rule.¶¶

(2) The federal programs named in ORS 279A.180 are accessible to DPSST for purchasing goods or services. DPSST hereby makes the determination according to ORS 279A.180 that the Local Preparedness Acquisition Act (Public Law 110-248), the GSA Order of 2000, and any subsequent revisions or updating of either of these programs describe other federal programs that, under federal law, are similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to DPSST.¶¶

(3) To purchase through a federal program, DPSST must document the following in the procurement file:¶¶

(a) The federal authority for DPSST to purchase through the federal program;¶¶

(b) The acquisition meets DPSST's needs;¶¶

(c) The price and other terms of the acquisition are advantageous to the State;¶¶

(d) No other price agreement for the goods or services exists based on DPSST's inquiry through OregonBuys or other applicable electronic procurement system;¶¶

(e) DPSST has considered the acquisition's impact upon local business as follows:¶¶

(A) If the procurement is in excess of \$2510,000, DPSST has given timely notice through OregonBuys, or other applicable electronic procurement system, of its needs, reasons, and intent to procure through a federal program;¶¶

(B) DPSST has provided a reasonable time period under the circumstances for individuals to respond to the notice and send written comments to DPSST; and¶¶

(C) DPSST has considered any comments and replied, if appropriate, before proceeding with its procurement through a federal program. This rule provides for an informal opportunity to comment to and be considered by DPSST, instead of the formal notice requirements for solicitations in excess of \$2510,000 according to ORS 200.035.¶¶

(f) State and local preference programs, including but not limited to Inmate Labor in accordance with the Oregon Constitution, Article I, Section 41 and Products of Disabled Individuals Program of ORS 279.835 to 850, are not waived or otherwise adversely affected by an acquisition through a federal program;¶¶

(g) DPSST has complied with OAR 137-045-0010 to 137-045-0090, and if it is required, obtained a legal sufficiency review or exemption from the Department of Justice; and¶¶

(h) DPSST is informed of its federal program's procurement process, including:¶¶

(A) Voluntary and Direct Contract. DPSST and contractors participate voluntarily. The contractors make direct deliveries to DPSST and retain the right to decline orders on a case-by-case basis, for any reason, within a five-day period of receipt of that order;¶¶

(B) Funding Fee. The price of a federal program contract includes a GSA industrial funding fee to cover GSA administrative costs to operate the federal program;¶¶

(C) New Contract. When a contractor accepts an order from DPSST, a new contract is formed. The contract's terms and conditions are incorporated by reference; and¶¶

(D) Additional Terms and Conditions. DPSST may add to its contract such significant, substantial contract terms and conditions as are required by State statutes or rules, if such additions do not conflict with the federal program's contract terms and conditions. Examples of such terms and conditions include, but are not limited to:¶¶

(i) Prompt Payment. DPSST may apply the terms and conditions of Oregon's prompt payment law to its contracts, but if DPSST fails to make this addition, then DPSST may be subject to the Federal Prompt Payment Act, 31 U.S.C. sec. 3901 et seq., as implemented at subpart 32.9 of the Federal Acquisition Regulation (FAR);¶¶

(ii) Commercial Terms. Patent indemnity and other commercial terms and conditions may be added if they do not conflict with the federal program's terms and conditions; and¶¶

(iii) Conflict Resolution. DPSST may revise the contract's dispute resolution provision to use alternative dispute resolution to the extent authorized by law.

Statutory/Other Authority: ORS 181A.410, ORS 279A.050, ORS 279A.065, ORS 279A.070, ORS 279A.180

Statutes/Other Implemented: ORS 181A.410, ORS 279A.065, ORS 279A.070, ORS 279A.180