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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**OEBB 2-2018**

CHAPTER 111  
OREGON HEALTH AUTHORITY  
OREGON EDUCATORS BENEFIT BOARD

**FILED**  
09/25/2018 10:18 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: In the matter of amending Procurement and Contracting for Benefit Plans and Services

EFFECTIVE DATE: 09/26/2018 THROUGH 03/24/2019

AGENCY APPROVED DATE: 09/13/2018

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**NEED FOR THE RULE(S):**

The purpose of this administrative rule amendment is to align OEBB's procurement rules with the public procurement code, which allows state agencies to pursue a small procurement when the cost of goods or services does not exceed \$10,000. ORS 279B.065 reads:

"279B.065 Small procurements. (1) A contracting agency may award a procurement of goods or services that does not exceed \$10,000 in any manner the contracting agency deems practical or convenient, including by direct selection or award. A contract awarded under this section may be amended to exceed \$10,000 only in accordance with rules adopted under ORS 279A.065.

(2) A contracting agency may not artificially divide or fragment a procurement so as to constitute a small procurement under this section. [2003 c.794 §53; 2005 c.64 §1; 2005 c.103 §8b; 2013 c.66 §1]"

**JUSTIFICATION OF TEMPORARY FILING:**

OEBB's current rules are not aligned with the public contracting code or the Department of Justice's model rules for public contracting, which puts OEBB at a disadvantage when pursuing small procurements. This temporary filing does this alignment and OEBB intends to file the amendments permanently as soon as practicable.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

The public contracting code was consulted, as well as the Dept. of Justice's model rules for public contracting in order to align OEBB rules governing small procurements (see ORS 279A and 279B, as well as OAR Chapter 137).

AMEND: 111-005-0020

**RULE SUMMARY:** The purpose of this administrative rule amendment is to align OEBB's procurement rules with the public procurement code, which allows state agencies to pursue a small procurement when the cost of goods or services does not exceed \$10,000. ORS 279B.065 reads:

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(2) A contracting agency may not artificially divide or fragment a procurement so as to constitute a small procurement under this section. [2003 c.794 §53; 2005 c.64 §1; 2005 c.103 §8b; 2013 c.66 §1]"

#### CHANGES TO RULE:

111-005-0020

#### Definitions ¶¶

For the purposes of OARs 111-005-0010 through 111-005-0080 the following definitions will apply:¶¶

- (1) "Apparent Successful Proposer" or "ASP" means an organization selected as a result of a competitive and completed Procurement process.¶¶
- (2) "Benefit Plan Contractor" means a Contractor that administers one or more Benefit plans for OEBCB.¶¶
- (3) "Bid" means a competitive document, binding on the Proposer and submitted in response to an Invitation to Bid.¶¶
- (4) "Bidder" means a Person submitting a proposal in response to an ITB.¶¶
- (5) "Competitive Range" means the group of Proposers or Bidders responding to a Procurement that has Proposals or Bids that score higher based on the Procurement's evaluation criteria than the remaining Proposers or Bidders in some meaningful way. Proposers or Bidders who are determined to be in a Competitive Range may also be referred to as finalists.¶¶
- (6) "Consultant" means brokers or other advisory personnel hired by the Board to:¶¶
  - (a) Assist in acquiring adequate Benefit Plan coverage for Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees;¶¶
  - (b) Assist in the study of all matters connected with the provision of adequate Benefit Plan coverage for Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees;¶¶
  - (c) Assist in the development and implementation of decision-making processes;¶¶
  - (d) Design and implement additional programs to review, monitor and assist in health improvement for Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees; and¶¶
  - (e) Provide other services as required by the Board.¶¶
- (7) "Contractor" means an individual or firm who provides services to the Board under a public contract.¶¶
- (8) "Emergency" means circumstances that:¶¶
  - (a) Could not have been reasonably foreseen;¶¶
  - (b) Create a substantial risk of loss, damage or interruption of Benefit Plans or other services or a substantial threat to property, public health, welfare or safety; and¶¶
  - (c) Require prompt execution of a contract to remedy the condition.¶¶
- (9) "Extensive Procurement" means the process of soliciting Proposals and Bids and selecting a Contractor for services amounting to \$150,000 and over.¶¶
- (10) "Intermediate Procurement" means the process of soliciting Proposals and Bids and selecting a Contractor for services amounting to under \$150,000 but over \$10,000.¶¶
- (11) "Invitation to Bid" or "ITB" means all documents, whether attached or incorporated by reference, used for soliciting bids.¶¶
- (12) "OEBCB" or "the Board" refers to the Board or other Persons or groups the Board delegates authority to for all or part of the Solicitation process.¶¶

(13) "ORPIN" means the Oregon Procurement Information Network, an online service operated by the Department of Administrative Services that displays Procurements and contracts issued by the state of Oregon's agencies.¶

(14) "Person" means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.¶

(15) "Procurement" means the action of obtaining goods or services under a public contract.¶

(16) "Proposal" means a competitive document, binding on the Proposer and submitted in response to a RFP.¶

(17) "Proposer" means a Person submitting a proposal in response to a RFP.¶

(18) "Renewal Contractor" means a contractor or consultant who provided the same or similar employee benefit plan or other services under a contract with the Board in the plan year immediately prior.¶

(19) "Request for Proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals.¶

(20) "Responsible Proposer" means a Person who meets the standards of responsibility described in OAR 111-005-0055.¶

(21) "Responsive Proposal" means a Proposal that substantially complies with the RFP and all prescribed Procurement procedures and requirements.¶

(22) "Selection Committee" means the group of individuals appointed or approved by the Board to review, evaluate and score Proposals received as part of an Intermediate or Extensive Procurement.¶

(23) "Single Point of Contact" or "SPC" means the designated OEBC staff or designee that serves as the official point of contact between OEBC and interested Proposers, ASPs, or Contractors.¶

(24) "Small Procurement" means the process of securing Contractors or Consultants for services amounting to ~~\$5,000 or less~~ less than \$10,000.¶

(25) "Sole Source" means the only Contractor or Consultant of a particular product or service reasonably available.¶

(26) "Solicitation" generally refers to the methods used to request goods or services through a competitive process, including Requests for Proposals, Invitations to Bid, and other methods used under Intermediate or Extensive Procurements.

Statutory/Other Authority: ~~Ch. 7 OL 2007~~ ORS 243.860 to 243.886

Statutes/Other Implemented: ~~Sec. 19, Ch. 7 OL 2007~~ ORS 243.864(1)(a)