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Procurement

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Section: Procurement and Contracting

Title: Procurement and Contracting Code

Number: 70.500

NOTE: Please note that this policy is pending review and is the revised Policy of FASOM policy 13.02 “Competitive Procedures for the Purchasing, Procurement & Contracts of Goods and Services”.

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POLICY

.100 POLICY STATEMENT

This policy summarizes the system-wide standards and procedures applicable to the purchase of goods and services or the contracting for professional services and capital construction projects.

Note: This policy supersedes FASOM Section 13.02: Competitive Procedures for the Purchasing, Procurement and Contracting of Goods and Services.

.110 POLICY RATIONALE

The OUS (used here to refer to the Oregon University System's seven member institutions and the Chancellor's Office collectively) seeks to ensure that the contracting and purchasing standards and procedures required by Oregon Administrative Rules (OAR) are understood and applied by all OUS personnel.

.120 AUTHORITY

- [ORS 351 et al.](#)
- OAR, chapter 580, as follows:
 - 1) Procurement and Contracting Code
[Division 61 – OUS Procurement and Contracting Code](#)
 - 2) Professional Services, and Goods and Services
[Division 62 – Purchasing and Contracts for Personal or Professional Services and Goods and Services](#)
 - 3) Capital Construction and Contracting
[Division 63 – Capital Construction and Contracting](#)

.130 APPROVAL AND EFFECTIVE DATE OF POLICY

Approved by the Associate Vice Chancellor for Finance & Administration/Controller on XX/XX/XX. The effective date of this policy is XX/XX/XX.

.140 KNOWLEDGE OF THIS POLICY

All OUS personnel must follow the standards and procedures summarized in this policy (OAR chapter 580, Division 61 through 63) and any applicable Institutional policies.

.200 PROCUREMENT AND CONTRACTING CODE (Division 61)

The rules and procedures set forth in OAR, chapter 580, Division 61 ([Division 61 – OUS Procurement and Contracting Code](#)) apply to the procurement of all professional services, goods and services, and capital construction projects.

.205 DEFINITIONS

All definitions used in this policy are found in OAR 580-061-0010 ([Division 61 – OUS Procurement and Contracting Code](#)) and have the meaning set forth therein.

.210 RESPONSIBILITIES

The following responsibilities are not exhaustive and the complete chapter 580, Division 61 rules should be consulted during any procurement process:

1. CHANCELLOR'S OFFICE RESPONSIBILITIES

The Director of Contracting and Purchasing is responsible for: soliciting, negotiating, managing OUS compliance with applicable procurement rules, cooperative contracts, providing technical assistance to OUS staff regarding contracting matters, affirmative action plans, debt collection, long-range capital construction projects, and compliance with the OUS Minority, Women and Emerging Small Business Policy. (<http://www.ous.edu/about/bid/mwesb>).

2. EMPLOYEE RESPONSIBILITIES

OAR 580-061-0000 Code of Ethics applies to all OUS employees: (http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_580/580_061.html).

3. INSTITUTIONAL RESPONSIBILITIES

Institutional responsibilities are further described below. Employees are responsible for adherence to all applicable Institutional policies and procedures in addition to those described here:

A. Purchasing and Contract Records

- (1) Institutions will maintain records relating to all Institutional purchasing and contracting transactions in accordance with the requirements of the Secretary of State and Oregon administrative rule.
- (2) Documentation of all purchasing and contracting transactions will be made available for inspection by the public as outlined in applicable public records laws.
- (3) Institutions will maintain records relating to all Institutional purchasing and contracting transactions that may include:
 - (a) An executed Contract and any amendments or Change Orders;
 - (b) The record of the actions used to develop the Contract;
 - (c) A copy of the Solicitation Document, if any;
 - (d) Any required findings or statement of justification for the selection of the Contractor or the procurement method used;
 - (e) The record of any negotiation of the Specifications, the Work, the Contract Price and related Contract terms;
 - (f) All information describing how the Contractor was selected, including the basis for awarding the Contract;
 - (g) The names of Entities and cost estimates considered.

B. Designation of Contract Officers

Each Institutional Vice President for Finance and Administration or the Vice Chancellor for Finance and Administration will designate staff authorized to enter into Contracts and Public Improvement Contracts for the Institution.

(1) Institutions will maintain a list identifying Contract Officers and describing the types and Contract Price of Contracts and Public Improvement Contracts they are authorized to enter into. Institutions will provide an updated list annually to the Director of Contracting and Purchasing at the Portland Chancellor's Office via the email address: pacs@ous.edu . The Vice Chancellor for Finance and Administration may designate staff authorized to enter into Contracts and Public Improvement Contracts on behalf of all Institutions.

(2) Contracts or Public Improvement Contracts entered into by individuals not designated as authorized Contract Officers will be voidable at the sole discretion of the Institution. Institutions may take appropriate action in response to execution of Contracts contrary to this rule. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such Contracts.

(3) Authorized Contract Officers will be responsible for ensuring that the proper procedures are followed as outlined in chapter 580, Divisions 60, 61, 62, and 63.

(4) Unless otherwise specified in chapter 580, divisions 60, 61, 62, and 63, the Contracting Officer will perform all the duties of the Owner on behalf of the Board.

(5) The Institution President may, by written agreement with the President of another Institution or the Chancellor, and after notice to the Chancellor, transfer such a delegation to a person at another Institution.

.300 PROFESSIONAL SERVICES & GOODS AND SERVICES (Division 62)

The rules and procedures described in chapter 580, Division 62 and summarized below, must be followed when the OUS intends to contract for professional services or goods and services ([Division 62 – Purchasing and Contracts for Personal or Professional Services and Goods and Services](#)).

.310 PROCUREMENT THRESHOLDS:

The procedures used for the procurement of professional services, or goods and services vary depending on the anticipated contract price, including all fees and expenses contemplated by the parties. **Multiple Contracts, purchase orders, or purchasing requisitions may not be issued separately to circumvent these rules.**

a) \$25,000 or less- Direct Procurement or other method of procurement deemed beneficial is allowed.

b) \$25,000.01 to \$100,000 – Informal Procurement, Formal Procurement or other method of procurement that the institution deems beneficial, *except* the Direct Procurement method is allowed.

c) Greater than \$100,000 – Formal Procurement, or other procurement method the Institution deems beneficial may be followed, *except* Direct or Informal Procurement.

.320 PROCUREMENT METHODS:

Institutions will use one of the following procurement methods:

1) Direct Procurement- the Institution negotiates directly with a single entity to provide professional services or goods and services.

2) Informal Procurement- A competitive process where the Institution posts an advertisement of the opportunity on the OUS Bid website (<http://secure.ous.edu/bid>) for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract based on the Specifications contained in the Solicitation Document.

3) Formal Procurement- A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS Bid website (<http://secure.ous.edu/bid>). The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances.

(c) Conducts the procurement in accordance with OAR 580-61-0000 through 580-61-0160.

4) Emergency Procurement- the Institution President, Chancellor, or designee may declare an emergency, documenting the reasons for the declaration and justifications for the use of the procedures used to select the contractor. The institution will maintain adequate records of the negotiations with the selected contractor.

5) Retainer- Institutions may conduct a Formal Procurement to enter into Retainer Contracts with multiple entities to provide professional services, or goods and services at contracted rates of compensation based on pre-qualifications.

6) Alternative Processes- the Institution may authorize alternative procurement methods that provide a competitive process to two or more entities that meet the following objectives:

a) Responds to innovative business and market methods; or

b) Contributes to Institution productivity improvement and process redesign; or

c) Results in comprehensive cost-effectiveness and productivity for the Institution.

7) Exempt- Institutions need not follow, regardless of value, a competitive process when seeking to contract for, or procure the goods or services listed in **OAR 580-062-0020(7)** (http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_580/580_062.html).

8) Sole Source- the Institution President, the Chancellor or designee, issues a written determination that due to special needs or qualifications, only a single seller is reasonably available provide such goods or services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Each Institution will provide public notice of its determination that the person or professional services or goods or services are only available from a Single Seller. Public notice must be provided on the OUS Bid website (<http://secure.ous.edu/bid>). The public notice will describe the personal or professional services or goods or services to be acquired from the Single Seller, identify the prospective Contractor, and include the date, time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(b) An Entity may protest the Institution's determination that the personal or professional services or goods or services are available from a Single Seller in accordance with OAR 580-061-0145.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

9) Special Entity- Institutions may enter into Contracts without using a competitive process with a federal, state, or local governmental agency, or a state Qualified Rehabilitation Facility certified by the Oregon Department of Human Services or the Oregon State Procurement Office. Institutions may participate in cooperative procurements with other contracting agencies if it is determined, in Writing, that the solicitation and award process for the Contract is reasonably equivalent to the respective process established in these rules and that the solicitation was advertised in Oregon.

.400 CAPITAL CONSTRUCTION CONTRACTING (Division 63)

The procedures set forth in chapter 580, Division 63 and summarized below, must be followed when the OUS seeks to erect, improve, repair, maintain, equip, and furnish buildings and structures under the control of the Board ([Division 63 – Capital Construction and Contracting](#)).

Authorization to Undertake Capital Construction Projects

Before an Institution contracts for capital construction on land owned or controlled by the Board, or prepares other than conceptual plans or preconstruction design, the Institution will obtain approval as set out in this rule, regardless of the source of funds or method by which the project is to be financed. To obtain approval, the Institution will describe the project, the financing plan for design and construction, and the operation and maintenance cost of the proposed project.

(1) For capital construction projects that total more than \$500,000 but less than \$5 million, inclusive of all fund sources, the Chancellor or designee may approve the allocation of expenditure authority to the Institution.

(2) Any capital construction project that does not meet the criteria in subsection (1) of this section shall be approved by the Board and submitted to the Legislature.

.405 DEFINITIONS

The following capitalized terms have the meaning set forth below:

(1) "Construction-Related Services" means one or more related services, which includes, but is not limited to: finance, design, preconstruction, and construction services. The project delivery methods that use Construction-Related Services include, but are not limited to: conventional construction services, design-build, construction manager at risk, agency construction management, and performance contracting.

(2) "Professional Consultant" means architects, engineers, planners, land surveyors, appraisers, construction managers, and similar professional consultants.

(3) "Capital Construction" means any construction or facility improvement that costs \$500,000 or more and is not considered maintenance or repair.

.410 PROCURMENT METHODS

Institutions will use the following methods of procurement when procuring Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services:

1) Direct Procurement- A process where the Institution negotiates directly with a single Entity to provide Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services.

2) Informal Procurement- A competitive process where the Institution posts an advertisement of the opportunity on the OUS Bid website (<http://secure.ous.edu/bid>) for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract based on the Specifications contained in the Solicitation Document.

3) Formal Procurement- A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS Bid website (<http://secure.ous.edu/bid>). The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for duration reasonable under the circumstances.

(c) Conducts the procurement in accordance with OAR 580-61-0000 through 0160.

4) Emergency Procurement- The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Contractor or Professional Consultant for a Contract or Public Improvement Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract or Public Improvement Contract with any qualified Entity or Professional Consultant for services included in the scope of the Emergency declaration. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

5) OUS Retainer Contract Program-

(a) The OUS Contracts and Purchasing Office will maintain Retainer Contracts for Professional Consultants, Construction-Related Services, and any other service that may from time to time benefit Institutions. The Retainer Contracts will be established in accordance with this subsection.

(A) Periodically, but no less often than every two years, the OUS Contracts and Purchasing Office will invite interested Contractors to submit business information that meets minimum qualifications as described in a Solicitation Document. Contractors that meet the minimum qualifications and have not been disbarred or disqualified by an agency of the State of Oregon as outlined in OAR 580-061-0160, may be offered a Retainer Contract to be listed on the respective retainer program to provide services in a non-exclusive and on an as-needed basis.

(B) Notice of the procurement will be published on the OUS Bid website (<http://secure.ous.edu/bid>).

(b) The OUS will maintain an electronic roster of all Professional Consultants and Contractors who have entered into Retainer Contracts. Institutions that utilize retainer programs will follow the procedures established in these rules and will only execute contracts from templates that have been approved for each respective retainer program.

6) Sole Source- A process where the Institution President, the Chancellor or designee has made a Written determination that due to special needs, experience, or qualifications, only a Single Seller is reasonably available to provide certain Professional Consultant services, Construction-Related Services, or a combination of Professional Consultant services and Construction-Related Services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Authority. Institutions may authorize sole source procurements up to \$1,000,000 cumulative for all Institution projects throughout a fiscal year. The Chancellor or designee may authorize sole source procurements up to \$5,000,000 cumulative for each Institution's projects throughout a fiscal year. The Board will approve all other sole source procurements.

(b) Each Institution will provide public notice of its determination that the Professional Consultant services, Construction-Related Services, or combination

of Professional Consultant services and Construction-Related Services are only available from a Single Seller. Public notice may be provided on the OUS procurement website (<http://secure.ous.edu/bid>). The public notice will describe the Professional Consultant services, Construction-Related Services, or combination of Professional Consultant services and Construction-Related Services to be acquired from the Single Seller, identify the prospective Professional Consultant or Contractor, and include the date; time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

7) Special Procurement-

(a) A special procurement is an exemption from competitive procedures that the Board determines is appropriate because it:

(A) Is reasonably expected to result in substantial cost savings to the Institution or to the public; or

(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with others processes described in this rule.

.415 PROFESSIONAL CONSULTANT PROCUREMENT THRESHOLDS

Institutions will use one of the following two procedures when procuring Professional Consulting services:

(1) OUS Capital Construction Retainer Program for Professional Consultants.

(a) For Professional Consultant service contracts where the anticipated Contract Price, including all contemplated fees, expenses and amendments are:

1) \$100,000 or less, the Institution may directly select a Professional Consultant that has entered into a Retainer Contract.

2) \$100,000.01 to \$250,000, the Institution must select at least three Professional Consultants who have entered into Retainer Contracts to provide proposals for the service. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document. In the event that fewer than three Professional Consultants are on the retainer that can provide the required service, the Institution may proceed with fewer than three Bids or Proposals.

3) \$250,000.01 to \$1,000,000 the Institution will post an advertisement of the opportunity on the OUS Bid website (<http://secure.ous.edu/bid>). All eligible Professional Consultants that have entered into Retainer Contracts will have an opportunity to submit a proposal in response to the opportunity. Selection of a

Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document.

(2) Standard Procurement. Except in cases of Emergency, Special Procurement, or when only a Single Seller is reasonably available, when procuring Professional Consultant services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions **will not be issued** separately with the intent to circumvent these rules:

(a) \$25,000 or less – Direct Procurement or other method of procurement that the Institution deems beneficial.

(b) \$25,000.01 to \$100,000 – Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial.

(c) Greater than \$100,000 – Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial.

.420 CONSTRUCTION-RELATED SERVICES PROCURMENT THRESHOLDS

Institutions will use one of the following procedures when procuring Construction-Related services:

(1) OUS Capital Construction Retainer Program for Construction-Related Services.

(a) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is:

1) \$50,000 or less, the Institution may select a Contractor that has entered into a Retainer Contract.

2) \$50,000.01 to \$500,000, the Institution must select at least three Contractors that have entered into Retainer Contracts to provide Bids or Proposals for the service. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the Solicitation Document. In the event that fewer than three Contractors are on the retainer that can provide the required service, the Institution may proceed with fewer than three Bids or Proposals. All eligible Contractors that have entered into Retainer Contracts will have an opportunity to submit a Bid or Proposal in response to the opportunity. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the Solicitation Document.

3) \$500,000.01 to \$1,000,000, the Institution will post an advertisement of the opportunity on the OUS Bid website (<http://secure.ous.edu/bid>). All eligible Contractors that have entered into Retainer Contracts will have an opportunity to submit a proposal in response to the opportunity. Selection of a Contractor from

submitted proposals will be based on the criteria set forth in the Solicitation Document

(2) Standard Procurement. Except in cases of Emergency, Special Procurement, or when only a Single Seller is reasonably available, when procuring Construction-Related Services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules:

(a) **\$25,000 or less** – Direct Procurement or other method of procurement that the Institution deems beneficial.

(b) **\$25,000.01 to \$100,000** – Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial.

(c) **Greater than \$100,000** – Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial.

.500 CONTACT INFORMATION

Direct questions about this policy to the following:

Hillary Bounds
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Hillary_Bounds@ous.edu

.600 HISTORY

XX/XX/XX Approved

Policy Last Updated: XX/XX/XX

Appendix Last Updated: XX/XX/XX