RESOLUTION NO. 06-056

A RESOLUTION ADOPTING ADDITIONAL REVISIONS FOR THE COLUMBIA GATEWAY URBAN RENEWAL AGENCY'S LOCAL CONTRACT REVIEW AUTHORITY

WHEREAS, on February 28, 2005, the Columbia Gateway Urban Renewal Agency adopted Resolution No. 05-054, approving revised rules for the Agency acting in its capacity as the Local Contract Review Authority for the Agency; and

WHEREAS, the 2005 Oregon Legislature adopted legislation making several technical corrections to the state public contracting code; and

WHEREAS, the Oregon Attorney General's Office has just completed revisions to the Attorney General's Model Rules for implementing the public contracting law; and

WHEREAS, the Agency's Local Contract Review Board Rules are patterned after the Attorney General's Model Rules; and

WHEREAS, it is necessary to revise the Agency's Local Contract Review Board rules adopted by Resolution No. 05-054 to ensure those rules comply with the changes adopted by the 2005 Legislature;

NOW, THEREFORE, BE IT RESOLVED BY THE COLUMBIA GATEWAY URBAN RENEWAL AGENCY AS FOLLOWS:

Section 1. Revised Rules Adopted. The Revised Rules set forth in Exhibit "A", attached hereto and incorporated herein by this reference, are hereby approved and adopted as the rules for the Agency's Local Contract Review Authority. These Revised Rules replace the rules adopted by Resolution No. 05-054

Section 2. Effective Date. This Resolution shall be effective as of May 8, 2006.

PASSED AND ADOPTED THIS 8TH DAY OF MAY, 2006.

Voting Yes, Agency Member: Broehl, Tenney, Seckora, Van Cleave, Zukin
Voting No, Agency Member: None
Absent, Agency Member: Davison
Abstaining, Agency Member: None

AND APPROVED BY THE CHAIR THIS 8TH DAY OF ~~FEBRUARY~~ MAY, 2006.

Attest:

Robb E. Van Cleave, Chair

Julie Krueger, MMC, City Clerk

(042606 06-056.ur res)

DIVISION 1

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

01-0100

Application; Federal Law Supremacy

(1) The Model Rules adopted by the Attorney General do not apply to the Columbia Gateway Urban Renewal Agency, except where they have been incorporated into these Rules. These Rules set forth the rules of procedure for the Columbia Gateway Urban Renewal Agency. These Rules consist of the following five divisions:

(a) This division 1, which is applicable to all Public Contracting;

(b) Division 2, which describes procedures for Public Contracting for Goods or Services, as defined in ORS 279B.005.

(c) Division 3, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 4, which describes procedures for Public Contracting for Construction Services.

(e) Division 5, which describes procedures for Personal Services Contracts for services other than architectural, engineering, land surveying services and related services covered in Division 3.

(2) In the event of conflict between rules in this division 1 and rules in divisions 2, 3, 4 and 5, the rules in divisions 2, 3 4, and 5 take precedence over the rules in this division 1.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these rules, or require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.

(4) These division 1 rules become effective on March 1, 2005 and apply to Public Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

01-0110

Definitions for the Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Rules will have the meaning set forth in the division of the Rules in which they appear, and if not defined there, the meaning set forth in these division 1 rules, and if not defined there, the meaning set forth in the Code. The following terms, when capitalized in these Rules, shall have the meaning set forth below:

(1) "**Addendum**" or "**Addenda**" means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) "**Administering Contracting Agency**" has the meaning set forth in ORS 279A.200(1) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).

(3) "**Agency**" means the Columbia Gateway Urban Renewal Agency.

(4) "**Award**" means, as the context requires, either the act or occurrence of the Agency's identification of the Person with whom the Agency will enter into a Contract following the resolution of any protest of the Agency's selection of that Person, and the completion of all Contract negotiations.

(5) "**Bid**" means a Written response to an Invitation to Bid.

(6) "**Closing**" means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(7) "**Code**" means the Public Contracting Code, as defined in ORS 279A.010.

(8) "**Competitive Range**" means the Proposers with whom the Agency will conduct discussions or negotiations if the Agency intends to conduct discussions or negotiations in accordance with Rule 02-0262 or Rule 04-0650.

(9) "**Contract**" means a "Public Contract," as defined in ORS 279A.010.

(10) "**Contract Price**" means, as the context requires, (i) the maximum payments that the Agency will make under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (ii) the maximum not-to-exceed amount of payments specified in the Contract, or (iii) the unit prices for Goods or Services or Personal Services set forth in the Contract.

(11) "**Contract Review Authority**" means the Columbia Gateway Urban Renewal Agency Board acting as the Local Contract Review Board pursuant to ORS 279A.060.

(12) "**Contractor**" means the Person with whom the Agency enters into a Contract.

(13) "**Descriptive Literature**" means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(14) "**Goods**" means supplies, equipment, materials, or any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, or any combination of these items.

(15) "**Invitation to Bid**" or "**ITB**" means all documents used for soliciting Bids in accordance with either ORS 279B.055, or 279C.335.

(16) "**Offer**" means a Written response to a Solicitation Document.

(17) "**Offeror**" means a Person who submits an Offer.

(18) "**Opening**" means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.

(19) "**Person**" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(20) "**Personal Services**" as used in division 2 and as used in division 1 when applicable to division 2 means the services performed under a Personal Services Contract. "Personal Services" as used in division 3 and division 4, and as used in this division 1 when applicable to division 3 or division 4, or both, has the meaning set forth in ORS 279C

(21) "**Personal Services Contract**" or "**Contract for Personal Services**" means a contract or member of a class of contracts, other than a contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Agency's Local Contract Review Board has designated as a Personal Services Contract pursuant to ORS 279A.055.

(22) "**Product Sample**" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(23) "**Proposal**" means a Written response to a Request for Proposals.

(24) "**Recycled Materials**" means recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(gg)).

(25) "**Request for Qualifications**" or "RFQ" means a Written document issued by the Agency to which Contractors respond in Writing by describing their experience with the qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(26) "**Request for Quotes**" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(27) "**Responsible**" means meeting the standards set forth in Rule 02-0640 or Rule 04-0370(2), and not debarred or disqualified by the Agency under Rule 02-0575 or Rule 04-0350.

(28) "**Responsible Offeror**" means as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in Rule 02-0640 or Rule 04-0370(2), and who has not been debarred or disqualified by the City under Rule 02-0575 or Rule 04-0350.

(29) "**Responsive**" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(30) "**Responsive Offer**" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(31) "**Request for Proposals**" or "**RFP**" means all documents used for soliciting Proposals in accordance with either ORS.279B.060, 279C.110 or Rule 04-0650.

(32) "**Services**" means services other than Personal Services.

(33) "**Signature**" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a document to which the Person intends to be bound.

(34) "**Signed**" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(35) "**Solicitation Document**" means an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C.

(36) "**Specification**" means any description of the physical or functional characteristics, or of the nature of the Goods or Services, including any requirement for inspecting, testing or preparing the Goods or Services for delivery and the quantities or qualities of the Goods and Services to be furnished under a Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(37) "**Work**" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.

(38) "**Writing**" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to present or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(39) "**Written**" means existing in Writing.

01-0120

Policy

The Agency shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

01-0130

Application of the Code and Rules; Exceptions

(1) Except as set forth in this section, the Agency shall exercise all rights, powers and authority related to Public Contracting in accordance with the Code and the Rules.

(2) Except as otherwise provided in these rules, the powers and duties of the local contract review board under the Public Contracting Code shall be exercised and performed by the Agency Board and all powers and duties given or assigned to the contracting agencies by the Public Contracting Code shall be exercised or performed by the Agency Staff Coordinator or City Manager.

(3) Procedures for screening and selecting persons to perform Contracts for Personal Services for Architectural, Engineering, and Surveying Services and Related Services are set forth in division 3 of these Rules. Procedures for screening and selecting persons to perform Contracts

for Personal Services other than Architectural, Engineering, and Surveying Services and Related Services are set forth in division 5 of these Rules.

(4) Neither the Code nor these Rules apply to the contracts or the classes of contracts described in ORS 279A.025(2), a copy of which is attached as Exhibit "A".

(5) Neither the Code nor these Rules apply to the Public Contracting activities of the Contracting Agencies listed in ORS 279A.025(3), a copy of which is attached as Exhibit "A".

(6) The Agency may enter into Public Contracts under a federal program described in ORS 279A.180 without following the procedures set forth in ORS 279B.050 through 279B.085, provided that the Agency enters into the Public Contract pursuant to rules adopted by the Agency pursuant to ORS 279A.180.

(7) The Agency may enter into contracts for Goods or Services with non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200 through 279A.225, or 279B.050 through 279B.085. However, the Agency must enter into such contracts in accordance with administrative rules promulgated by the State of Oregon.

(8) Any public contract where the amount of purchase exceeds $15,000.00 shall be awarded by the Contract Review Authority. The Contract Review Authority shall have authorized the purchase through the budget process or by other special action. Following staff review of the bids or proposals received and staff's recommendation concerning the contract award, the Contract Review Authority shall award the contract to the lowest responsible bidder or the best proposer who has submitted the proposal which is in the best interest of the Agency, based upon the criteria set forth in the request for proposal.

Contract Preferences

01-0300

Preference for Oregon Goods and Services; Nonresident Bidders

(1) Award When Offers Identical. When the Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Agency shall award the Contract based on the following order of precedence:

(a) The Agency shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services or Personal Services that have been manufactured or produced in Oregon.

(b) If two or more Offerors submit identical Offers, and both offer Goods or Services or Personal Services manufactured or produced in Oregon, the Agency shall award the Contract by drawing lots among the identical Offers offering Goods or Services or Personal Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(c) If the Agency receives identical Offers, and none of the identical Offers offer Goods or Services or Personal Services manufactured or produced in Oregon, then the Agency shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(2) **Determining if Offers are Identical**. The Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services or Personal Services described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Agency determines, in writing, that two or more Proposals are equally advantageous to the Agency.

(3) **Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon**. For the purposes of complying with section 1 of this Rule, the Agency may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Agency, any information the Agency determines is appropriate and necessary to allow the Agency to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. The Agency may use any reasonable criteria to determine if Goods or Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Agency applies those criteria equally to each Bidder or Proposer.

(4) Procedure for Drawing Lots. In any instance when this Section calls for the drawing of lots, the Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

01-0310

Reciprocal Preferences

When evaluating Bids pursuant to Rule 02-0255, Rule 02-0257 or Rule 04-0370, the Agency shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. The Agency may rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state bidders, and (ii) the amount of such preference.

01-0320

Preference for Recycled Materials

(1) Notwithstanding provisions of law requiring the Agency to award a Contract to the lowest responsible bidder or best proposer or provider of a quotation, and in accordance with subsection (2) of this section, the Agency shall give preference to the procurement of goods manufactured from recycled materials.

(2) In comparing goods from two or more Bidders or Proposers, if at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, the Agency shall select the Bidder or Proposer offering goods manufactured from recycled materials if each of the following four conditions exists:

(a) The recycled product is available;

(b) The recycled product meets applicable standards;

(c) The recycled product can be substituted for a comparable non-recycled product; and

(d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent, or a higher percentage if a written determination is made by the Agency and set forth in the Solicitation Document. For purposes of making the foregoing determination, the Agency shall consider the costs of the goods

following any adjustments the Agency makes to the price of the goods for purposes of evaluation pursuant to Rule 01-0310.

(3) For the purposes of this Section, the Agency shall determine if goods are manufactured from recycled materials in accordance with standards established by the Agency.

Cooperative Procurement

01-0400

Authority for Cooperative Procurements

(1) The Agency may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) A solicitation and award process uses source selection methods substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085 when it has the characteristics set forth in ORS 279A.200(2). The Agency shall determine, in writing, whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, 279B.060 or 279B.085 in accordance with ORS 279A.200(2).

01-0410

Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurements administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether the participants must enter into a written agreement with the Administering Contracting Agency, or any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting Agency may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Rules.

(2) If a Contracting Agency, acting as a Purchasing Contracting Agency, enters into a Contract or Price Agreement based on a Cooperative Procurement, the Contracting Agency shall

comply with the Code and these Rules, including without limitation those sections of the Code and these Rules that govern:

(a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement;

(b) The advertisement of the solicitation document related to the Cooperative Procurement; and

(c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts or Price Agreements based on a Cooperative Procurement.

01-0420

Joint Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

01-0430

Permissive Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

01-0440

Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement

(1) For purposes of determining whether a Purchasing Contracting Agency must give notice of intent to establish a Contract through a Permissive Cooperative Procurement as required by ORS 279A.215(2)(a), the estimated amount of the procurement will exceed $250,000 if:

(a) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract that will, in aggregate, exceed $250,000, whether or not the total amount or value of the payments is expressly stated;

(b) The Purchasing Contracting Agency's Contract arising out of the Permissive Cooperative Procurement expressly provides for payment, whether in a fixed amount or up to a stated maximum amount, that exceeds $250,000; or

(c) At the time the Purchasing Contracting Agency enters into the Contract, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services, or both, or Personal Services, under the Contract will, in aggregate, exceed $250,000 over the anticipated duration of the Contract.

(2) An Administering Contracting Agency that intends to establish a Contract arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in ORS 279A.215(2)(a) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), 279A.215(3) and these Rules.

(3) The Purchasing Agency shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c).

01-0450

Interstate Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

01-0460

Advertisements of Interstate Cooperative Procurements

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in ORS 279B.055(4)(b) and (c).

01-0470

Protests and Disputes

(1) An Offeror or potential Offeror wishing to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement or the award or proposed award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425 unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

(3) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.

01-0480

Contract Amendments

A purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Rule 02-0800.

DIVISION 2

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES

General Provisions

02-0000

Application

These division 2 rules implement ORS Chapter 279B, Public Procurements and apply to the Procurement of Goods or Services. Local Contracting Agencies, pursuant to ORS 279B.050(4)(a), may also adopt these division 2 rules to govern the Procurement of Personal Services Contracts or elect to award Personal Services Contracts under procedures set forth in ORS 279B.055 through 279B.085. These division 2 rules become effective on March 1, 2005 and apply to Contracts first advertised, but if not advertised then entered into, on or after March 1, 2005.

02-0100

Definitions

(1) "**Advantageous**" means in the Agency's best interests, as assessed according to the judgment of the Agency.

(2) "**Affected Person**" or "**Affected Offeror**" means a Person whose ability to participate in a Procurement is adversely affected by a Agency decision.

Source Selection

02-0250

Methods of Source Selection

Except as permitted by ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, the Agency shall Award a Public Contract for Goods or Services, or both, based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 and Rule 02-0255 or competitive sealed Proposals pursuant to ORS 279B.060 and Rule 02-0260.

02-0255

Competitive Sealed Bidding

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

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

(a) General Information.

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

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

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

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

(B) The form and instructions for submission of Bids and any other special information;

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

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

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

(F) How the Agency will notify Bidders of Addenda and how the Agency will make Addenda available (See Rule 02-0430).

(b) Agency Need. The character of the Goods or Services the Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Bidding and Evaluation Process.

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

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

(C) If the Agency intends to Award Contracts to more than one Bidder pursuant to Rule 02-0600(4)(c), the Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

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

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

(f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval from the Agency.

02-0257

Multistep Sealed Bids

(1) Generally. The Agency may procure Goods or Services by using multistep competitive sealed Bids pursuant to ORS 279B.055(12).

(2) Phased Process. Multistep bidding is a phased process that seeks necessary information or unpriced technical Bids in the initial phase and regular competitive sealed bidding, inviting Bidders who submitted technically eligible Bids in the initial phase to submit competitive sealed price Bids on the technical Bids in the final phase. The Contract shall be Awarded to the lowest Responsible Bidder. If time is a factor, the Agency may require Bidders to submit a separate sealed price Bid during the initial phase to be opened after the technical evaluation.

(3) Public Notice. Whenever multistep sealed Bids are used, public notice for the first phase shall be given in accordance with Rule 02-0300. Public notice is not required for the subsequent phases. However, the Agency shall give notice of subsequent phases to all Bidders and inform

Bidders of the right to protest Addenda issued after initial Closing pursuant to Rule 02-0430 and inform Bidders excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Rule 02-0720.

(4) Procedures Generally. In addition to the procedures set forth in Rule 02-0300 through 02-0490, the Agency shall employ the procedures set forth in this rule for multistep bidding:

(a) Solicitation Protest. Prior to the Closing of phase one, the Agency shall provide an opportunity to protest the solicitation and under ORS 279B.405 and Rule 02-0730.

(b) Addenda Protest. The Agency may, provide an opportunity to protest any Addenda issued during phase two pursuant to Rule 02-0430(3)(b).

(c) Exclusion Protest. The Agency may, but is not required to provide an opportunity for a Bidder to protest exclusion from the second round of multistep sealed Bids as set forth in Rule 02-0720.

(d) Administrative Remedy. Bidders may submit a protest to any Addenda or to any action by the Agency that has the effect of excluding the Proposer from the second phase of multistep bidding to the extent such protests are provided for in the Solicitation Document or required by this section. Failure to so protest shall be considered the Bidders's failure to pursue an administrative remedy made available to the Bidder by the Agency.

(e) Award Protest. The Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Rule 02-0740. An Affected Bidder may protest, for any of the reasons set forth in Rule 02-0720(2), its exclusion from the second phase of a multistep sealed Bid, or an Addendum issued following initial Closing, if the Agency did not previously provide Bidders the opportunity to protest such exclusion or Addendum.

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

(a) Form. Multistep sealed bidding shall be initiated by the issuance of an Invitation to Bid in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth in Rule 02-0255(2), the multistep Invitation to Bid shall state:

(A) That un-priced technical Bids are requested;

(B) Whether price Bids are to be submitted at the same time as un-priced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;

(C) That the solicitation is a multistep sealed Bid Procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose un-priced technical Bids are found eligible in the first phase;

(D) The criteria to be used in the evaluation of un-priced technical Bids;

(E) That the Agency, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the un-priced technical Bids;

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the Invitation to Bid.

(G) Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.

(b) Addenda to the Invitation to Bid. After receipt of un-priced technical Bids, Addenda to the Invitation to Bid shall be distributed only to Bidders who submitted un-priced technical Bids.

(c) Receipt and Handling of Un-priced Technical Bids. Un-priced technical Bids need not be opened publicly.

(d) Evaluation of Un-Priced Technical Bids. Un-priced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Un-priced technical Bids shall be categorized as:

(A) Eligible;

(B) Potentially eligible; that is, reasonably susceptible of being made eligible; or

(C) Ineligible. The Agency shall record in writing the basis for determining a Bid ineligible and make it part of the Procurement file. The Agency may initiate phase two of the procedure if, in the Agency's opinion, there are sufficient eligible un-priced technical Bids to assure effective price

competition in the second phase without technical discussions. If the Agency finds that such is not the case, the Agency may issue an Addendum to the Invitation to Bid or engage in technical discussions as set forth in subsection (5)(e) of this rule.

(e) Discussion of Un-priced Technical Bids. The Agency may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, the Agency shall not disclose any information derived from one un-priced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the Closing of the final step established by the Agency. Such submission may be made at the request of the Agency or upon the Bidder's own initiative.

(f) Notice of Ineligible Un-priced Technical Bid. When the Agency determines a Bidder's un-priced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bids.

(g) Mistakes During Multistep Sealed Bidding. Mistakes may be corrected or Bids may be withdrawn during phase one:

(A) Before un-priced technical Bids are considered;

(B) After any discussions have commenced under subsection (5)(e);

(C) When responding to any Addenda of the Invitation to Bid; or

(D) In accord with Rule 02-0470.

(6) Revisions to Solicitation Specifications. After Closing of phase one, the Agency may issue Addenda that modify the Specifications for the Goods or Services being procured or that modify other terms and conditions of the Invitation to Bid. The Agency shall provide such Addenda to all Bidders who initially submitted unpriced technical Bids. The Agency may then require Bidders to submit revised unpriced technical Bids.

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

(a) Initiation. Upon the completion of phase one, the Agency shall invite each eligible Bidder to submit a price Bid.

(b) Conduct. The Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this rule;

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

02-0260

Competitive Sealed Proposals

(1) Generally. The Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section 2 of this rule. The Agency shall provide public notice of the competitive sealed Proposal as set forth in Rule 02-0300.

(2) Request for Proposal. Prior to issuing a Request for Proposal, Agency staff shall submit the RFP to the Contract Review Authority for its review and approval. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:

(a) General Information.

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

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

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

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

(B) The form and instructions for submission of Proposals and any other special information;

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

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

(E) How the Agency will notify Proposers of Addenda and how the Agency will make Addenda available (See Rule 02-0430).

(b) Agency Need. The character of the Goods or Services the Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) Proposal and Evaluation Process.

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

(B) The Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(2)(h)(E). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the Agency; and

(C) If the Agency intends to Award Contracts to more than one Proposer pursuant to Rule 02-0600(4)(d), the Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable Preferences described in ORS 279A.125(2) and 282.210.

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

(f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the Goods or Services without prior written approval from the Agency.

02-0261

Procedures for Competitive Range, Multi-tiered and Multistep Proposals

(1) Generally. The Agency may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in Rule 02-0300 through 02-0490 for methods of Contractor selection that call for the establishment of a Competitive Range or include discussions or negotiations, the Agency shall employ the procedures set forth in this rule for Competitive Range, multi-tiered and multistep Proposals.

(2) Solicitation Protest. Prior to the initial Closing, the Agency shall provide an opportunity to protest the solicitation under ORS 279B.405 and Rule 02-0730.

(3) Addenda Protest. The Agency may provide an opportunity to protest, pursuant to Rule 02-0430, any Addenda issued pursuant to ORS 279B.060(6)(d).

(4) Exclusion Protest. The Agency may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in Rule 02-0720.

(5) Administrative Remedy. Proposers may submit a protest to any Addenda or to any action by the Agency that has the effect of excluding the Proposer from subsequent phases of a multiple-tiered or multistep Request for Proposals to the extent such protests are provided for in the Solicitation Document. Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Agency.

(6) Award Protest. The Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Rule 02-0740. An Affected Proposer may protest, for any of the reasons set forth in Rule 02-0720(2), its exclusion from the Competitive Range or any phase of a multi-tiered or multistep sealed Proposal, or an Addendum issued following initial Closing, if the Agency did not previously provide Proposers the opportunity to protest such exclusion or Addendum.

02-0262

Competitive Range, Discussions and Negotiations

(1) Competitive Range. When the Agency's solicitation process conducted pursuant to ORS 279B.060(6)(b) calls for the Agency to establish a Competitive Range at any stage in the Procurement process, it shall do so as follows:

(a) Determining Competitive Range.

(A) The Agency shall establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Agency shall determine and rank the Proposers in the Competitive Range.

(B) The Agency may increase the number of Proposers in the Competitive Range if the Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the most Advantageous Proposer. The Agency may decrease the number of Proposers in the initial Competitive Range

only if the excluded Proposers have no reasonable chance to be the most advantageous Proposer.

(b) Protesting Competitive Range. The Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. The Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Agency's evaluation and determination of the Competitive Range in accordance with Rule 02-0720.

(c) Intent to Award; Discuss or Negotiate. After determination of the Competitive Range and after any protest period provided in accordance with subsection (1)(b) expires, or after the Agency has provided a final response to any protest, whichever date is later, the Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Agency's intent to Award in accordance with Rule 02-0740 and ORS 279B.410.

(ii) After the protest period provided in accordance with Rule 02-0740 expires, or after the Agency has provided a final response to any protest, whichever date is later, the Agency shall commence negotiations in accordance with section (3) of this rule with Proposers in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them as set forth in section (2) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in section (3) of this rule with the Proposers in the Competitive Range.

(2) Discussions; Revised Proposals. If the Agency chooses to enter into discussions with and receive best and final Offers (See Rule 02-0262(4)), the Agency shall proceed as follows:

(a) Initiating Discussions. The Agency shall initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the Competitive Range (collectively "eligible Proposers") regarding their Proposals with respect to the provisions of the RFP that the Agency identified in the RFP as the subject of discussions. The Agency may conduct discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Agency would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Agency may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section 2, but need not conduct the same amount of discussions with each eligible Proposer. The Agency may terminate discussions with any eligible Proposer at any time. However, the Agency shall offer all eligible Proposers the same opportunity to discuss their Proposals with the Agency before the Agency notifies eligible Proposers of the date and time pursuant to section 4 that best and final Proposals will be due.

(A) In conducting discussions, the Agency:

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

(ii) Shall disclose other eligible Proposer's Proposals or discussions only in accordance with 279B.060(6)(a)(B) or (C);

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

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

(i) Continue discussions with a particular eligible Proposer;

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

(iii) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section 4 of this rule to the eligible Proposers requesting best and final Offers.

(3) Negotiations.

(a) Initiating Negotiations. The Agency may commence serial negotiations with the highest-ranked eligible Proposers or commence simultaneous negotiations with all eligible Proposers as follows:

(A) After initial determination of which Proposals are Responsive; or

(B) After initial determination of the Competitive Range in accordance with section (1) of this rule; or

(C) After conclusion of discussions with all eligible Proposers and evaluation of revised Proposals (See section (2) of this rule).

(b) Conducting Negotiations.

(A) Scope. The Agency may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

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

(B) Terminating Negotiations. At any time during discussions or negotiations that the Agency conducts in accordance with sections (2) or (3) of this rule, the Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if the Agency reasonably believes that:

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

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

(c) Continuing Serial Negotiations. If the Agency is conducting serial negotiations and the Agency terminates negotiations with a Proposer in accordance with paragraph 3(b)(B) of this rule, the Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in section (3) of this rule until the Agency has either:

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

(B) Completed one round of discussions or negotiations with all Proposers in the Competitive Range, unless the Agency provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the Agency has completed all rounds of discussions or negotiations.

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

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

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

(e) Any oral modification of a Proposal resulting from negotiations under this section (3) shall be reduced to Writing by the Proposer.

(4) Best and Final Offers. If best and final Offers are required, the Agency shall establish a common date and time by which Proposers must submit best and final Offers. Best and final Offers shall be submitted only once; provided, however, the Agency may make a written determination that it is in the Agency's best interest to conduct additional discussions, negotiations or change the Agency's requirements and require another submission of best and final Offers. Otherwise, no discussion of or changes in the best and final Offers shall be allowed prior to Award. Proposers shall also be informed if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offer will be construed as their best the final Offer. The Agency shall evaluate Offers as modified by the best and final Offer. The Agency shall conduct evaluations conducted as described in Rule 02-0600. The Agency shall not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

02-0263

Multistep Sealed Proposals

(1) Generally. The Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279B.060(6)(b)(G).

(2) Phased Process. Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the second phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase. If time is a factor, the Agency may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

(3) Public Notice. Whenever multistep sealed Proposals are used, public notice for the first phase shall be given in accordance with Rule 02-0300. Public notice is not required for the second phase. However, the Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Rule 02-0720.

(4) Procedure for Phase One of Multistep Sealed Proposals.

(a) Form. Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in Rule 02-0260(2), the multistep Request for Proposal shall state:

(A) That un-priced technical Proposals are requested;

(B) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;

(C) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;

(D) The criteria to be used in the evaluation of un-priced technical Proposals;

(E) That the Agency, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical Proposals;

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

(G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.

(b) Addenda to the Request for Proposal. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

(c) Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.

(d) Evaluation of Un-Priced Technical Proposals. Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Un-priced technical Proposals shall be categorized as:

(A) Qualified;

(B) Potentially qualified; that is, reasonably susceptible of being made qualified; or

(C) Unqualified. The Agency shall record in writing the basis for determining a Proposal unqualified and make it part of the Procurement file. The Agency may initiate phase two of the procedure if, in the Agency's opinion, there are sufficient qualified or potentially qualified un-priced technical Proposals to assure effective price competition in the second phase without technical discussions. If the Agency finds that such is not the case, the Agency shall issue an Addendum to the Request for Proposal or engage in technical discussions as set forth in subsection 4(e).

(e) Discussion of Un-priced Technical Proposals. The Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Agency shall not disclose any information derived from one un-priced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the

Closing date established by the Agency. Such submission may be made at the request of the Agency or upon the Proposer's own initiative.

(f) Notice of Unqualified Un-priced Technical Proposal. When the Agency determines a Proposer's un-priced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposals.

(g) Mistakes During Multistep Sealed Proposals. Mistakes may be corrected or Proposals may be withdrawn during phase one:

(A) Before un-priced technical Proposals are considered;

(B) After any discussions have commenced under subsection 4(e) of this rule;

(C) When responding to any Addenda to the Request for Proposal; or

(D) In accordance with Rule 02-0470.

(5) Methods of Contractor Selection for Phase One. In conducting phase one, the Agency may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final offers as set forth in Rule 02-0261 and Rule 02-0262. If the Agency uses such methods of Contractor selection, it shall follow the procedures set forth in Rule 02-0261 and Rule 02-0262.

(6) Procedure for Phase Two.

(a) Initiation. Upon the completion of phase one, the Agency shall invite each qualified Proposer to submit price Proposals.

(b) Conduct. The Agency shall conduct phase two as any other competitive sealed Proposal Procurement except:

(A) As specifically set forth in this rule; and

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

02-0265

Small Procurements

(1) Generally. For Procurements of Goods or Services less than or equal to $15,000 the Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 and in accordance with rules promulgated by the Agency pursuant to ORS 279A.070.

(a) For purchases up to the sum of $500.00, an authorized Agency employee may use a field purchase order to purchase needed items, without any other approval.

(b) For purchases in an amount in excess of $500.00, and up to $2,500.00, a department head can approve a purchase only after obtaining at least three (3) competitive quotes from responsible and responsive bidders.

(c) For purchases in an amount in excess of $2,500.00 and up to $7,500.00, a department head can approve a purchase only after obtaining at least three (3) written quotes from responsible and responsive bidders.

(d) For purchases in an amount in excess of $7,500.00, and up to $15,000.00, a purchase order must be approved by the Agency Staff Coordinator or City Manager only after at least three (3) written quotes have been obtained from responsible and responsive bidders.

(e) In soliciting quotes under this rule, Agency staff members shall endeavor to obtain quotes from bidders who have paid unemployment taxes or income taxes in the state of Oregon during the 12 calendar months immediately preceding the submission of the quote, and who have a business address in Wasco County.

(f) The selection criteria for deciding which quote to select for award of a small procurement purchase may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(2) Amendments. The Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 02-0800, but the cumulative amendments shall not increase the total Contract Price to greater than $25,000.

02-0270

Sole-source Procurements

(1) Generally. The Agency may Award a Public Contract without competition as a sole-source Procurement pursuant to the requirements of ORS 279B.075.

(2) Public Notice. If, but for the Agency's determination that it may enter into a Contract as a sole-source, the Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or 279B.060, the Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 02-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Agency shall give such public notice at least seven (7) Days before Award of the Contract.

(3) Procedure. The Agency, prior to purchase must document the procurement file with the Agency's findings of current market research to support the determination that the product or service is available from only one seller or source. The Agency's findings must also include:

(a) A brief description of the contract or contracts to be covered, including volume of contemplated future purchases;

(b) Description of the product or service to be purchased; and

(c) The reasons the Agency is using this procurement method, which must include at least one of the following:

(A) Efficient utilization of existing supplies and services requires the acquisition of compatible supplies and services; or

(B) The goods and services required for the exchange of software or data with other public or private agencies are available from only one source; or

(C) The particular product is for use in a pilot or experimental project; or

(D) Other findings that support the conclusion that the goods or services are available from only one source.

(4) Protest. An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with Rule 02-0710.

02-0275

Emergency Procurements

The Agency may award a Public Contract as an Emergency Procurement, in an amount not to exceed $100,000, using a procurement method which encourages competition that is practicable under the circumstances. The award of Public Contract as an Emergency Procurement which exceeds the sum of $100,000 shall be awarded by the Contract Review Authority, using a procurement method which encourages competition that is practicable under the circumstances.

02-0280

Special Procurements

(1) Generally. The Agency may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) Public Notice. The Agency shall give public notice of (1) its request for approval of a Special Procurement and (2) the Contract Review Authority's approval of a Special Procurement in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 02-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Agency shall give such public notice of its request for approval of a Special Procurement at least seven (7) Days prior to the approval of the Special Procurement by the Contract Review Authority. The Agency shall give such public notice of the approval of a Special Procurement at least fourteen (14) Days before Award of the Contract.

(3) Pursuant to ORS 279B.085, the following contracts are classified as "special procurements", exempt from the requirements of traditional competitive bidding:

(a) Brand Names or Products.

(A) Solicitation specifications for public contracts must not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections (2) and (3) of this rule.

(B) The Agency may specify a particular brand name, make or product suffixed by "or equal", "or approved equal", "or equivalent, "or approved equivalent", or similar language if there is no other practical method of specification.

(C) The Agency may specify a brand name, mark, or product without an "or equal" or equivalent suffix if there is no practical method of specification, after documenting in the procurement file the following information:

(i) A brief description of the solicitation(s) to be covered, including volume of contemplated future purchases;

(ii) The brand name, make, or product to be specified; and

(iii) The reasons the Agency is seeking this procurement method, which must include at least one of the following findings in the procurement file:

1) It is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of public contracts or substantially diminish competition; or

2) Specification of the brand name, mark or product would result in substantial cost savings to the Agency; or

3) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

(b) Advertising Contracts. The Agency should use competitive methods wherever possible to achieve the best value, and document in the procurement file the reasons why a competitive process was deemed to be impractical.

(c) Contracts for Price Regulated Items.

(A) The Agency may, without competitive bidding, contract for the direct purchase of supplies and services being where the rate for the supplies and services being purchased is established by federal, state, or local regulatory authority.

(B) The Agency should use competitive methods wherever possible to achieve best value and document in the procurement file the reasons why a competitive process was deemed to be impractical.

(d) Purchase of Used Personal Property.

(A) The Agency may purchase used property or equipment without competitive bidding, if at the time of purchase, the Agency has determined

and documented that the purchase will (i) be unlikely to encourage favoritism or diminish competition, and (ii) result in substantial cost savings or promote the public interest.

(B) "Used personal property or equipment" means the property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant-trade or industry as qualifying the personal property or equipment as "used", at the time of the Agency purchase. "Used property or equipment" generally does not include property or equipment if the Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(C) For purchases of used personal property or equipment costing an amount not exceeding $150,000, the Agency must, where feasible, obtain three competitive quotes, unless the Agency has determined and documented that a purchase without obtaining competitive quotes will result in cost savings to the Agency and will not diminish competition or encourage favoritism.

(D) For purchases of used personal property or equipment exceeding $150,000, the Agency must obtain and keep a written record of the source and amount of quotes received. If three quotes are not available, a written record must be made of the attempts to obtain quotes.

(e) Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalts. Contracts for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts are exempt from formal competitive bidding requirements if the Agency seeks competitive quotes from a majority of vendors in the area, makes its purchases from the least expensive source, and retains written justification for the purchase made.

(f) Copyrighted Materials. If the contract is for the purchase of copyrighted materials and there is only one known supplier available for such goods, the Agency may contract for the purchase of the goods without competitive bidding.

(g) Periodicals. The Agency may purchase subscriptions for periodicals, including journals, magazines, and similar publications without competitive bidding.

(h) Investment Contracts. The Agency may, without competitive bidding, contract for the purpose of the investment of public funds or the borrowing of funds by the Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

(i) Insurance Contracts. Contracts for insurance shall be let by one of the following alternative procedures:

(A) Insurance Consultant. The Agency may solicit proposals from insurance agents to perform insurance services as the Agency's insurance consultant in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility:

(i) As part of the RFP process for selection of an insurance consultant, the Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such selection. These efforts shall include a public advertisement in at least one newspaper of general circulation in The Dalles and in at least one insurance trade publication of general circulation in the state. The advertisement shall generally describe the nature of the insurance that the Agency will require.

(ii) Any contract period shall not exceed three years. An insurance consultant may serve more than one contract period. An insurance consultant of record shall qualify for a contract prior to each period as if each contract period were the first.

(iii) In selecting an insurance consultant, the Agency shall select the consultant or consultants most likely to perform the most effective services.

(B) Specific Proposals for Insurance Contracts. As an alternative to the process provided in section (i), the Agency may solicit proposals from insurance agents for the purpose of acquiring specific insurance contracts subject to the following conditions:

(i) The Agency shall make reasonable efforts to inform known insurance agents in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. These efforts shall include public advertisements in at least one newspaper of general circulation in The Dalles area and at least one insurance trade publication of general circulation in the state. The advertisement shall state the specific nature of the insurance acquired.

(ii) The Agency shall select an insurance agent on the basis of the most advantageous offer considering coverage, premium cost, and service to be provided.

(j) Oil or Hazardous Material Removal. The Agency may enter into public contracts without competitive bidding when ordered to cleanup oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS 466.605 through 466.680 and this order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous materials. In exercising its authority under this exemption, the Agency shall:

(A) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;

(B) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;

(C) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected; and

(D) Not contract pursuant to this exemption in the absence of an order from the Department of Environmental Quality to cleanup a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

(k) Goods purchased through the State of Oregon. Contracts for the purchase of goods or materials if competitive bids for the same goods or materials have been obtained by the State of Oregon, the contract is awarded to the same party that the State dealt with, and the price of the goods or materials is the same or lower than that paid by the State.

(l) Auction Sales of Personal Property. Personal property may be sold at auction, after the property has been declared surplus, if the Agency determines that the auction contemplated will probably result in a higher net return than if the property were sold by competitive written bid.

(m) Sales of Personal Property. The Agency may sell personal property after the property has been declared surplus, including recyclable or reclaimed materials, without formal competitive bidding if the Agency has determined that a

negotiated sale will result in increased net revenue and the following conditions are complied with:

(A) When the current market value per item is deemed to be less than $1,000.00, the Agency may establish a selling price, schedule and advertise a sale date, and sell to the first qualified buyer meeting the sale terms; or

(B) When the current value per item is deemed to exceed $1,000.00, the personal property must be offered for competitive written bid and be advertised in accordance with ORS 279.025, or be offered for sale at public auction. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected and the Agency may negotiate a sale subject to the following conditions:

(i) An appraisal of the market value of the property is obtained and documented and the negotiated sale price exceeds the market value; or

(ii) The sale amount exceeds the highest bid received through the bidding or auction process.

(n) Donations of Personal Property.

(A) The Agency may transfer personal property after the property has been declared surplus, including recyclable or reclaimed materials, without remuneration or only nominal remuneration without competitive bids to the following activities;

(i) Another public agency; or

(ii) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any state agency and which is certified to receive federal surplus property; or

(iii) Any recognized non-profit activity which is certified to receive federal surplus property.

(B) The Agency may donate or sell, without competitive bids, surplus personal property to recognized private non-profit social or health service activities, subject to the following conditions: