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HOMES FOR GOOD HOUSING AGENCY

BOARD OF COMMISSIONERS MEETING WEDNESDAY, JUNE 27TH, 2018

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AGENDA

Homes for Good Housing Agency

BOARD OF COMMISSIONERS

Location of the meeting:

Board of County Commissioners Conference Room, Public Service Building, 125 East 8th Avenue, Eugene, OR, 97401

Phone: 541.682.2506

The meeting location is wheelchair-accessible. Anyone needing special accommodations (deaf, people with hearing loss, language translation, chemical sensitivity needs, and large print copies of agenda), please make your request at least 48 hours prior to the meeting.

Wednesday, June 27th, 2018

(2:30 p.m.) (Board of County Commissioners Conference Room)

1. #PUBLIC COMMENTS

(Expected maximum time 10 minutes: Speakers will be taken in the order in which they sign up and will be limited to 3-minutes per public comments. If the number wishing to testify exceeds 10 speakers, then additional speakers may be allowed if the chair determines that time permits or may be taken at a later time.)

2. COMMISSIONERS' RESPONSE TO PUBLIC COMMENTS AND/OR OTHER ISSUES AND REMONSTRANCE (2 min. limit)

3. PUBLIC HEARING

The public hearing will be held for the purpose of taking comments on the Agency's draft findings supporting the exemption of certain classes of special procurements and public improvement contracts from competitive bidding requirements. The draft findings are available for review on the Agency's website.

4. ADJUSTMENTS TO THE AGENDA

5. COMMISSIONERS' BUSINESS

6. EMERGENCY BUSINESS

7. EXECUTIVE SESSION

"On June 27th, 2018 the Homes for Good Board will hold an Executive Session pursuant to ORS 192.660(2)(e), to conduct deliberations with persons designated by the Homes for Good Board of Commissioners to negotiate real property transactions."

8. ADMINISTRATION

- A. Approval of Minutes: 05/23/2018
- B. Executive Director Report(estimated time 15 minutes)
- C. Order/18-27-06-01H/In the Matter of Authorizing the Homes for Good Procurement Policy(Valerie Warner, Deputy Director)(estimated time 10 minutes)

- D. Order/18-27-06-02H/In the Matter of Authorizing the Submission of the Annual Agency Plan for the Fiscal Year Beginning October 1, 2018 (Wesley Lucas, Property Management Division Analyst)(estimated time 10 minutes)
- E. Order/18-27-06-03H/In the Matter of Approving the Submission of the Five Year Capital Fund Action Plan 2018 – 2022 (Jared Young, Contract Administrator)(estimated time 10 minutes)
- F. Order/18-27-06-04H/In the Matter of Authorizing the Executive Director to Apply for Assistance from Oregon Health Authority (OHA) Health Systems Division (HSD) and/or Oregon Housing and Community Services (OHCS) Mental Health Housing Funds for a Supportive Housing Apartment Community in Eugene, Oregon (Nora Cronin, Project Developer)(estimated time 10 minutes)
- G. Order/18-27-06-05H/In the Matter of Authorizing Formation of Sheldon Village LLC (Steve Ochs, Real Estate Development Director)(estimated time 5 minutes)
- H. Presentation/Current Homes for Good Real Estate Presentation Part 2 (Steve Ochs, Real Estate Development Director)(estimated time 30 minutes)

9. OTHER BUSINESS

Adjourn



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Meeting Minutes

HOMES FOR GOOD HOUSING AGENCY

BOARD OF COMMISSIONERS

Location of the meeting:

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May 23rd, 2018 — HOMES FOR GOOD HOUSING AGENCY

(2:30 p.m.) (Board of County Commissioners Conference Room)

1. PHA PLAN PUBLIC HEARING

Jacob Fox: Homes for Good works closely with our Resident Advisory Board that both Char and Michelle are on to get input on the Resident Advisory Board on any policy changes we are intending to make. Historically we have not had public attendance to the PHA plan hearing. We inform the Commissioners of this plan. There is no public attendance for this hearing today to give any comments in this meeting. There is an opportunity to give comments in writing until June 11th. Since no one is here to give public comment, we will continue to take written comments until June 11th, 2018. This concludes the public hearing and we will continue with the Homes for Good board meeting.

2. EXECUTIVE SESSION

None

3. ADJUSTMENTS TO THE AGENDA

Jacob Fox: Due to Commissioner Bozevich needing to leave early, I would like to move "Item B" under the "Administration" portion to the end of the meeting to deal with the board orders that require approval.

4. COMMISSIONERS' BUSINESS

- Jay Bozevich – *Present via phone conference (Jay leaves the meeting at 3:40pm)*
- Pete Sorenson – *Present via phone conference*
- Sid Leiken – *Absent*
- Gary Williams – *Absent*

5. #PUBLIC COMMENTS

None

6. COMMISSIONERS' RESPONSE TO PUBLIC COMMENTS AND/OR OTHER ISSUES AND REMONSTRANCE

7. EMERGENCY BUSINESS

None

8. ADMINISTRATION

A. Approval of the 04/11/2018 & 04/18/2018 Homes for Good Board Meeting Minutes

Motion to approve minutes: Michelle Thurston

Motion seconded: Pat Farr

Motion is approved unanimously 5/0 with Commissioners

Sid Leiken and Gary Williams absent.

C. Order 18-23-05-01H/In the Matter of Authorizing Formation of Market District Commons LLC and MD Manager LLC. (Steve Ochs, Real Estate Development Director)

Steve Ochs: This order relates to Market District Commons. We have presented on this project to you several times for a variety of reasons. We have submitted our funding application to Oregon Housing and Community Services and are waiting to hear back. One of the next steps is to form a Limited Liability Corporation which all the funding will go through this LLC. This order authorizes Jacob Fox and Valerie Warner to act on behalf of the LLC to enter financial agreements. You will be seeing another board order if funded that will be more specific to the funding sources and will talk about loans and investors. This board order is specific to setting up the LLC.

Pete Sorensen: Who will be the owner of the corporation?

Steve Ochs: We will be forming two LLCs. One is the Managing Member LLC which Homes for Good will be 100% a member. That Managing Member LLC will then be .01% member of the Market District Commons LLC which will consist of the Managing Member LLC and the investor which will be determined if the project is funded.

Jacob Fox: To elaborate, this is the way we structure our portion of ownership with our low-income housing tax credit properties. The same structure has been in front of the board for approval in the past. How it works is that we are a .01% owner in the LLC until we exit the tax credit partnership which usually happens around year 15 after the investors have received all their tax credit depreciation and losses. Then we move our

buildings into LLCs that we control 100%. Then the buildings will formally go to our corporate balance sheet.

Motion to approve 18-23-05-01H: Michelle Thurston

Motion seconded: Pat Farr

Motion is approved unanimously 5/0 with Commissioners

Sid Leiken and Gary Williams absent.

E. Order 18-23-05-02H/ In the Matter of Accepting a Bid and Awarding Contract #18-C-0032 for the Administration Building Chiller Replacement Project (Jacob Fox, Executive Director)

Jacob Fox: As you know we purchased a new building at 100 West 13th. We had a mechanical failure of a major system, the air conditioning system also known as the chiller. We worked with our attorneys on this and we were worried about a protracted procurement process because the summer is approaching and we have been seeing warmer temperatures. We have commercial tenants in the building including a medical clinic where the air condition needs to be controlled and right now our system has failed. We worked with our attorney and went through the emergency procurement process. Kurt Von der Ehe who is present did an amazing job of navigating through the procurement process. We did not just go out and select a company to fix it. We worked with an engineer and receive bids. It is disappointing that we have to spend almost \$170,000 to fix a building component however it is a permanent solution for not only the current tenants but for our staff when we move into the building.

Char Reavis: Was there any disclosure that the chiller might be an issue?

Jacob Fox: We did extensive due diligence on the building systems and none of the due diligence that we did indicated that we would have a chiller failure. In the due diligence report, it was noted that we would have to replace the chiller at some point. We bought the property knowing this but not expecting it to fail prior to moving in our plan was to wrap that upgrade in during the rehab next fall.

Pat Farr: Was this the existing chiller from the old library?

Kurt Von der Ehe: Yes, this is the existing chiller from back when it was the Eugene Public Library. It has been working ok as is over the years.

Motion to approve 18-23-05-02H: Michelle Thurston

Motion seconded: Pat Farr

Motion is approved unanimously 5/0 with Commissioners

Sid Leiken and Gary Williams absent.

F. Order 18-23-05-03H/ In the Matter of Approving a Reimbursement Resolution for New Chiller at Homes for Good's New Administrative Building (Valerie Warner, Deputy Director)

Valerie Warner: When we learned about the need for this improvement and started to think about what funds to use, it occurred to me that we had just executed this municipal lease with PNC for the EPC, that's the energy project that we are doing. There are funds that are authorized to borrow on that now we are going to need to borrow on. It is a loan that has already been approved. We have applied for it, the funds are ours. As a conservative finance person, I would like to leverage this rather than use reserves because we have so much development activity going on. We are bifurcating the loan and this will be a taxable portion of that municipal lease and the money we are using for EPC is not taxable because we are using on a government property. Often when we have public improvements, they are funded by bonds or loans. We do reimbursement resolutions and sometimes we do them in the same board action that approves the project. We do not do them often because when we do a project like low income housing development the types of cost we will be reimbursing are not inclusive costs such as staff time. The reimbursement resolution allows us to include some early costs and allows us to go back 60 days from the day that we borrowed the funds and reimburse ourselves. On this resolution, I estimated \$9,000 in engineering cost. Without this item, we would not be able to do it. We would have to pay that portion out of development funds. This allows us the flexibility to reimburse ourselves.

Pat Farr: So, this resolution is just for \$9,000 and not in addition to the \$174,000 for the chiller?

Valerie Warner: We are going to borrow the whole amount to replace the chiller but we are going to have the money before we spend it before that portion of it. This portion of it for the engineering we have already spent which we will need the reimbursement resolution for.

Pat Farr: I want to be clear that the \$9,000 is a part of the \$174,000 and not on top of the \$174,000?

Valerie Warner: The \$9,000 is on top of the chiller cost. The \$174,000 is for the vendor that will purchase and install the equipment. The \$9000 is largely for the engineering to design the project.

Motion to approve 18-23-05-03H: Michelle Thurston

Motion seconded: Pat Farr

Motion is approved unanimously 5/0 with Commissioners

Sid Leiken and Gary Williams absent.

G. Order 18-23-05-04H/ In the Matter of Authorizing the Executive Director to Apply for Assistance from the Federal Home Loan Bank of Des Moines Competitive Affordable Housing Program for the Housing First Apartment Community in Eugene, Oregon (Steve Ochs, Real Estate Development)

Steve Ochs: This order would allow us to apply for up to \$750,000 for the Housing First Project on Martin Luther King Blvd. I will give you a quick background on that as part of the Development Pipeline presentation. Nora Cronin our project manager for Housing First will speak more about this shortly. The Housing First project is one that we have been partnering with Lane County and St. Vincent de Paul. The idea is that we would build an apartment community that has support services for those coming out of homelessness and would be located right next to the Behavioral Health Center on Martin Luther King Blvd. Recently we had our kick off meeting to get things going. We are looking to go after 9% tax credit funding the beginning of next year so the timing of this funding would be great as it takes them a while to award this money so we would not find out until December if we are awarded. That will be perfect timing for us to determine how much we need to ask the State at the beginning of next year. This order allows us to apply for the funding.

Michelle Thurston: Are you applying for the full \$750,000?

Pat Farr: How confident are you in receiving this funding?

Nora Cronin: I am Nora Cronin the new Project Developer at Homes for Good. I have applied for this type of funding on past projects. They are pretty prescriptive, there are a set number of points you can get and it is very clear on how many points you can get when you apply. They told me what the point value of the lowest scoring project was last year and we are above that and I am fairly confident that we will get it but you don't know what the pool of projects is this year. We are about 6 points above the lowest scoring project last year and I think we have a good shot. It is a big chunk of money that I think we should apply for and I think it would be great for the project.

Char Reavis: Since there are other people involved in the funding of this project so that will be a benefit as well.

Jacob Fox: Homes for Good partnered with Lane County and we are doing a convening of healthcare leadership and we've received early indications that PeaceHealth and Kaiser will be making a commitment to the project that will be significant. I am still working with them to learn exactly what that looks like but I'm pretty positive that we will get a substantial investment from healthcare. Things are looking good for the gap funding. As Nora pointed out, an additional \$750,000 could allow us to maybe ask for a little less than the maximum of 9% on the low-income housing tax credit application which is always a good thing.

Motion to approve 18-23-05-04H: Michelle Thurston

Motion seconded: Pat Farr

Motion is approved unanimously 5/0 with Commissioners

Sid Leiken and Gary Williams absent.

B. Executive Director Report

Jacob Fox: This is a more internally focused Executive Director Report. The reason why we can do the things that we do is because of our employees. I've seen a lot of Executive Directors kind of lose touch with the hard work employees do every day. I am dedicating two half days a month to working directly with our staff. There are two reasons for this, one is that I want to see what they do and two, I want to be able to speak with every staff person to see how things are going what ideas they have for the future of the organization, what questions/concerns they have regarding their work or the overall direction of the agency. How I plan to document the information is that I want people to feel they can be very candid with me. I will probably start with documenting the themes that I am hearing and will weave those into a future Executive Director Report for the board. I will also weave those comments into all agency emails in my communications with staff.

The other thing is that the entire Management Team read an article from the Harvard Business Review that really helped us figure out where we are in our evolution as an organization and how our approach to work needs to change now that we have gotten through the first few years of me as the Executive Director. We've cleaned up a lot of business systems. There is kind of a new era for us and the way I envision it is less hierarchy and more of a mentor and coach relationship with staff. Bringing the management team along in changing their thinking as well of where we are going with the organization.

The final thing is that we do have a new strategic plan that as deeply as we can, will be developing in the coming months. We haven't engaged our line staff and key employees in prior strategic plans. It wasn't as transparent of a process as I would've liked it to be. Obviously, they saw all the reports but a lot of staff did not have time to read them. We are trying to figure out how to make our evolution as an organization and strategic plan more meaningful to every employee in the organization.

Char Reavis: I heard some positive feedback from one of the staff that participated in the Job Shadowing and they felt very appreciated and comfortable speaking their mind.

Jacob Fox: I think the board is seeing how awesome our staff is through bringing our Excellence Awards winners to the board meetings and will continue to do that. We have a lot of great people working for us and there is a great future ahead.

Pat Farr: Congratulation on the new approach to the strategic plan. The way you are going about it by describing more involvement with staff. Strategic plans are more effective when people are a part of it.

Char Reavis: I would like to say customer service is so much better. People are feeling more comfortable in expressing that they do not agree with something. It makes a difference when people are heard and feel that their voice matters.

Michelle Thurston: I know there has been some turnover with staff from Homes for Good from a resident's point of view. I have heard from my own experience with people in the

housing community that they are impressed with the new people that have been brought in because everyone seems to have that same view and goal of what they want to accomplish and what they want to see happen in making sure that residents are taken care of and I think that's a great thing.

Jacob Fox: For us, if we can get our operations more efficient, we would like to expand our resident's services. We could possibly change property management positions to more resident focused positions. Through efficiency there is room to change the DNA of our agency to be able to help out a lot more.

Char Reavis: If there are no further comments we can move on to the presentation.

Jacob Fox: There are a few reasons why we developed this presentation and I think it is a good thing for the board to know that the amount of time we have invested in governance and communicating with the board is extensive so this board packet for example took a minimum of 30 hours of staff time with the with the real estate presentation included. I think it is a good investment because the board really needs to understand what we are doing and the calculated risks we are taking at a pretty granular level. I would also say that I think you all know how the River Road issue went down with the neighbors made me realize that the board needs more frequent updates on the "why" behind we sell property and how we are going to reinvest those funds. As I stated before when we get into changing out governance structure over the next few months, I'll be bringing orders to the board on a change in governance. We do need a real estate development committee to meet frequently; we need an accounting and finance sub-committee. At the very least I need an executive committee. I think because of the Lane County Commissioners many commitments we are going to need to think richly about the future of governance for this agency.

What we did was invested a ton of time in giving you an update on almost all aspects of real estate development. There are a couple of outliers that I'll explain as we get further into the presentation. I will need some advice from the board on how frequently you want this update. Pete emailed me as he was getting questions about Market District Commons so he asked for some orientation and I pointed him back to this presentation that the board received last week. Just because the board needs information to answer questions that you will get in the community. You need to be able to answer basic questions and point people in our direction. I will now turn it over to our Real Estate Development Director, Steve Ochs for our presentation.

Steve Ochs: I wanted to introduce Spencer McCoy and Nora Cronin who are project developers. They are super knowledgeable and motivated and we are happy to have them part of the team. One of the biggest parts of our real estate development is the ability to partner with providers, architects, contractors, and provide great affordable housing. Steve Ochs Presents PowerPoint

Steve Ochs Presents Real Estate Development PowerPoint

Minutes Reflect Questions and Answers Related to the Presentation

Predevelopment Activities

Michelle Thurston: What is the most time-consuming activity of a development project? Is it the funding or the development, what is the most time-consuming aspect for a project such as Glenwood as an example?

Steve Ochs: In the case of the Glenwood property, it was the environmental review process. Typically, the funding aspect takes the longest.

Nora Cronin: With the funding, the reason why it takes a lot of time is due to the funding cycle. It is often once a year so if you are not approved you may have to wait till the next year.

Pat Farr: With predevelopment activities and funding applications, can they merge? You do not have to complete predevelopment activities before you start your funding cycle?

Steve Ochs: That is correct. Depending on the funds, some like to be the last funder in and other funders don't mind not knowing if you have secured other funding.

Spencer McCoy: Typically, the predevelopment activities will be creating things we will need for the funding applications.

Jacob Fox: The funding application is most connected to the low-income housing tax credit application. In the predevelopment activities, a lot of times you are chasing your gap financing so in the context of the Housing First project, we submitted a Meyer Memorial Trust grant application for \$300,000. Nora is going to pursue the Federal Home Loan Bank, and we are trying to get healthcare to also contribute.

The Costs of Real Estate Development Projects

Jacob Fox: I wanted to reflect a little on a couple things I think the board should know about the high cost of real estate development. The cost of staffing for our real estate development and asset management is not small at is a half a million dollars a year. If you have a team that is half a million dollars a year and you get a developer fee of \$850,000 – \$1,000,000 every year, the other half a million is gobbled up in predevelopment inflow and outflow. I think when people hear about a million-dollar developer fee, they think people are making money on this. That is not the case with us. If we didn't get those fees, the risk wouldn't be worth it. The other thing is that the risk on these projects is spread over 60 years even though the tax credit compliance period is just 15 years. We are making a 60-year affordability commitment to the State of Oregon so that means that after we have retired, we still need to have staff that are paying attention to the real estate assets.

Financial Overview of Homes for Good Development

Char Reavis: Day Island isn't selling for more than two million even though it is along the Willamette River?

Jacob Fox: We did a lot of extensive work with our brokers and the issue with Day Island is about buildable square footage. The area in which you can build on is a lot less than what it looks like. So, for the buildable square footage, it is pretty aggressively priced at \$2.4 million

Pat Farr: My instinct that properties inside of Eugene are more desirable because the lack of available land to develop on inside Eugene. Is that a fair assumption?

Steve Ochs: We are even seeing the prices of sites in Springfield increase.

Ela Kubok: You do not see the Housing First project in the Gap financing needs because we are getting ready to put that together so we have a number and a timeline for when we need to acquire it. We are working on applications right now so this would be a separate time where we would come back to the board. Nora is the project developer for Housing First.

Market District Commons

Michelle Thurston: For this building, there will be 15 units set aside for specifically for veterans. I now understand that these 15 units will be for veterans and people with disabilities. Will veterans be moved to the top of the list?

Steve Ochs: When we initially developed this project, and working with VetLift, we were thinking about having 12 or 13 units for veterans. When the project based vouchers came out, we applied for 15 units so the theory is now that we would have 12 units for veterans and 3 units for people with disabilities. We are still working through what that looks like with the waitlist. The Homes for Good Rent Assistance division is working on the waitlist. For now, we are still looking at 12 units for veterans and 3 units for people with disabilities.

Pete Sorenson: When Homes for Good is trying to allocate different components of a project for veterans, is there a requirement that a certain number of spots or percentage be given to those categories of people who are covered under the civil rights act such as veteran? Are there any other requirements for other categories such as persons with disabilities?

Steve Ochs: Yes. Through the funding application we are putting in, we are committing to serve both veterans and persons with disabilities and we are committing to the number of units we are providing. That could change.

Pete Sorenson: Is there any way to determine whether we are lawfully serving these people or are we excluding people in preference for another for example, there is a lot of interest in serving veterans but other categories such as the elderly, women, or persons with disabilities who are covered under the civil rights act may not receive the same treatment.

Jacob Fox: We have robust engagement with our regulators on decision making like this. We also have a close partnership with legal aid as well for example they come to all our Section 8 briefings and we talk to them about the aspects of our real estate development. On the project based vouchers, we go through the process of issuing a competitive RFP. That RFP contains language around fair housing and equal opportunity. Then we must send our proposed selection to HUD who does a thorough review. We have apartment buildings that are dedicated specifically to the elderly and persons with disabilities. Based on the attorneys and regulating bodies that must approve our projects, I do not feel there are any civil rights violation liability.

Steve Ochs: We had a call with the HUD field office recently and we asked about these issues.

Spencer McCoy: We are very on top of fair housing issues when we are looking at serving special populations at all our properties. In this conversation, we were told to specifically look at by HUD as that we do not have disparate impact. So, we are looking closely to make sure that we are not having disparate impacts with these different groups.

Pat Farr: I have a question for you Commissioner Sorenson. Were you asking if we are potentially committing civil rights violations by giving veterans preferential housing treatment?

Pete Sorenson: Not at all. Veterans are part of the civil rights act but so are other groups. So, I'm concerned that we are monitoring any federal decision making regarding what groups are favored over any other group.

Char Reavis: Is there some sort of needs assessment that happens as far as disabled people and veterans before a decision is made on allocating units.

Steve Ochs: We will go to our own consolidated plan or our partners to determine the needs of the people we serve.

RAD 2.0

Pat Farr: Is there a gap in time when residents are not housed?

Steve Ochs: No, we have to have the replacement housing build before or if they have a voucher, we will let them stay in the unit while they are searching for a new residence.

Pat Farr: So, it is seamless?

Spencer McCoy: It is possible that there would be a temporary relocation but we would have to follow the URA and put them up in a hotel and there would be all those requirements that would apply.

Char Reavis: Before this started, there was incredible communication with the residents where they were informed on this process.

Steve Ochs: We used a relocation consultant for phase one and we will be using her again for phase 2.

Jacob Fox: What we will do is probably not change this presentation much. We will briefly overview the RAD 2.0 and we will continue through the rest of the presentation at our June 27th meeting.

Due to time constraints, the presentation was not completed and will be resumed at the next board meeting on June 27th, 2018

9. OTHER BUSINESS

Adjourn



AGENDA CHECKLIST

AGENDA INFORMATION TO BE SUBMITTED TO THE BOARD OFFICE
(Aisha McCoy, Administrative Specialist ext 2525)

One Title Memo

Agenda Packet
One Original Hard Copy plus
One copy e-mailed to
amccoy@homesforgood.org

Material Due
Due by 12 pm Wednesday
preceding the week it will be
included in the agenda notice

AGENDA TITLE: Joint order of the Board of Commissioners and Local Contract Review Board opting out of the Attorney General's Model Public Contracting Rules and amending public contracting rules for the Housing Authority and Community Services Agency of Lane County, dba Homes for Good Housing Agency

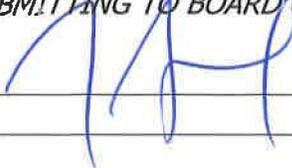
DEPARTMENT	<i>Executive</i>		
CONTACT	<i>Valerie Warner</i>	EXT	<i>2503</i>
PRESENTER	<i>Valerie Warner</i>	EXT	<i>2503</i>

AGENDA DATE: **06/27/2018**

THIS ITEM WILL INVOLVE:

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Consent Calendar | <input type="checkbox"/> Report | <input type="checkbox"/> Appointments | <input type="checkbox"/> Committee Reports |
| <input checked="" type="checkbox"/> ORDER/Resolution | <input type="checkbox"/> Discussion & Action | <input type="checkbox"/> Discussion Only | |
| <input type="checkbox"/> Ordinance/Public Hearing | | | |
| Public Comment Anticipated? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Estimated Time 15 min | |

NOTE: DEPARTMENT MANAGER MUST SIGN OFF BEFORE SUBMITTING TO BOARD OFFICE

Executive Director/: **Jacob Fox** Date **06/19/2018** 

Deputy Director _____

Legal Staff-Review by: _____ Date _____

*if required _____

Management Staff- _____ Date _____

Review by: _____



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HOMES FOR GOOD MEMORANDUM

TO: Homes for Good Board of Commissioners

FROM: Valerie Warner, Deputy Director

AGENDA ITEM TITLE: Joint order of the Board of Commissioners and Local Contract Review Board opting out of the Attorney General's Model Public Contracting Rules and amending public contracting rules for the Housing Authority and Community Services Agency of Lane County, dba Homes for Good Housing Agency

AGENDA DATE: June 27, 2018

I MOTION

It is moved that the joint order of the Board of Commissioners and the local contract review board, opting out of the Attorney General's model public contracting rules and amending public contracting rules for the Housing Authority and Community Services Agency of Lane County, dba Homes for Good Housing Agency, be adopted effective July 1, 2018.

II ISSUE

The uniform guidance requires that procurement rules be adopted by the governing board.

III DISCUSSION

A. Background/Analysis

Homes for Good procurement activities may involve federal funds, as in the case of the HUD Capital Fund Program or the Weatherization program, or non-federal funds, such as are used in low income housing development. The United States Office of Management and Budget released new guidance in 2014, known as the Uniform Guidance, that changed some requirements related to procurements with federal funds. Agencies spending federal funds are required to adopt the new procurement guidelines by July 1, 2018.

This exercise presented us with an opportunity to review and update the procurement guidance for non-federal funds at the same time. Staff worked with our attorneys at Local Government Law, to create the package of guidance

presented in this board order. Once the policy is formally in place, we will train staff in compliance and create new internal materials to assist staff members with various procurement activities.

B. Recommendation

Approval of the proposed order is recommended.

IV IMPLEMENTATION/FOLLOW-UP

None required.

V ATTACHMENTS

1. Exhibit A – Findings in support of the order adopting the rules
2. Exhibit B1 – Procurement Policy
3. Exhibit B2 – Public Contracting Rules
4. Exhibit B3 -- Public Notice Postings

IN THE BOARD OF COMMISSIONERS OF THE
HOMES FOR GOOD HOUSING AGENCY, OF LANE COUNTY OREGON

ORDER 18-27-06-01H

In the Matter of Joint order of the Board of Commissioners and Local Contract Review Board opting out of the Attorney General's Model Public Contracting Rules and amending public contracting rules for the Housing Authority and Community Services Agency of Lane County, dba Homes for Good Housing Agency

WHEREAS, it is the policy of the Housing and Community Services Agency of Lane County, Oregon (Agency) that a sound and responsive public contracting system should allow impartial, meaningful, and open competition, preserving formal competitive selection as the standard for public contracts unless otherwise specifically exempted herein, by state or federal law, or by subsequent Agency Action; and

WHEREAS, the Oregon Legislature adopted HB 2341 (2003 Oregon Laws, Chapter 794), which was signed by the Governor, and had an operative date of March 1, 2005. This Act repealed Oregon Revised Statutes ("ORS") Chapter 279 (with minor exceptions) and replaced it with three new subchapters: ORS 279A, 279B, and 279C. These three subchapters, together, constitute the Public Contracting Code (or Code). Any Agency rules and exemptions previously adopted under ORS Chapter 279 expired on March 1, 2005; and

WHEREAS, absent any action by the Local Contract Review Board on or after March 1, 2005, the Agency has operated under the Public Contracting Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49 (the "Model Rules"); and

WHEREAS, in order to adopt new public contracting rules that differ from the Model Rules, under ORS 279A.065(5), the Board must specifically state that the Model Rules adopted by the Attorney General do not apply to Agency and prescribe its own public contracting rules, which may include portions of the Attorney General's Model Rules. The Local Contract Review Board may also adopt rules for public contracting not covered by the Model Rules, as long as they do not conflict with the Public Contracting Code; and

WHEREAS, the Public Contracting Code divides powers and duties for contracting into two categories: those that must be performed by the "Local Contract Review Board"; and those that must be performed by the "Contracting Agency"; and

WHEREAS, pursuant to ORS 279A.060, the Agency's Board of Commissioners is the Local Contract Review Board for the Agency and, as such, is authorized to act on all such matters on behalf of the Agency, adopt Public Contracting Rules, and establish procedures for amendment of such rules; and

WHEREAS, the Local Contract Review Board may designate certain personal service contracts or classes of service contracts as personal service contracts, which are not subject to the procedural requirements of the Public Contracting Code or the Model Rules; and

WHEREAS, Agency recognizes that it may exempt certain public improvement contracts or classes of such contracts under ORS 279C.335; and

WHEREAS, the Agency's Board of Commissioners additionally requests that the Agency's Local Contract Review Board approve the classes of special procurements set forth in the attached rules, based upon the findings set forth in Exhibit A to this order; and

WHEREAS, as a recipient of federal funds from several sources (primarily Housing and Urban Development), Agency is required to enact procurement policies in compliance with and implementing federal law, 2 C.F.R. Section 200.317 through Section 200.326.

NOW IT IS HEREBY ORDERED:

1. The Agency's Board of Commissioners (Agency Board) is hereby designated to continue as the Local Contract Review Board of the Agency and shall have all of the rights, powers and authority necessary to carry out the provisions of Chapters 279A, 279B, and 279C (the "Public Contracting Code") and attached state and federal Rules. Except as otherwise provided in this Order, the definitions established in the attached Rules apply herein. The term "Contracting Agency" as used in the attached Rules includes Contracting Agency's chief administrative officer, his or her designee, or any other purchasing agent, as designated by Agency policy. Those individuals are hereby designated as Agency's Contracting Agency and may exercise all authorities, powers and duties granted to a Contracting Agency under the Public Contracting Code and attached Rules, unless otherwise established by Agency policy.

2. The above recitals and Exhibit A are hereby adopted by the Agency Board, sitting as the Local Contract Review Board, as findings of fact supporting approval of the Directors' request for classes of special procurement and public improvement contract exemptions.

3. The Model Rules adopted by the Attorney General pursuant to ORS 279A.065 do not apply to Agency. Instead, the Agency hereby prescribes the following state procurement Rules, which include portions of the Attorney General's Model Rules, as the Rules of Procedure that the Agency will use for its public contracting when not required to follow its Federal Grant Procurement Policy, adopted below: Public Contracting Rules Chapter 137, Divisions 46, 47, 48 and 49. While the numbering of these Rules reflects the numbering system of the Attorney General's Model Rules, they incorporate Agency changes to the Model Rules, and, therefore, are not the Attorney General's promulgated administrative rules. Agency exemptions are also set forth in these Rules, as numbered Exemptions 1 through 18 (E-1 through E-18). The Agency also adopts the attached Federal Grant Procurement Policy to apply as required by

federal law or federal grant terms. All above-referenced Rules are attached to this Order as Exhibit B-1 and B-2, and incorporated herein by this reference.

4. In accordance with ORS 279A.065(6)(b), the Agency shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules in order to determine whether amendments are required to ensure statutory compliance.

5. Amendments to these Rules and new rules shall be adopted in accordance with this Order, the Public Contracting Code, and federal law. Special procurement requests and approvals shall be made in accordance with Division 47 of the attached Rules and ORS 279B.085. Public improvement contract exemption procedures, including notice and public hearing requirements, shall be made in accordance with Division 49 of the attached Rules and ORS 279C.335.

6. The Model Cost Accounting Guidelines developed by the Oregon Department of Administrative Services pursuant to Section 3, Chapter 869, Oregon Laws 1979 are hereby adopted as the Agency's Cost Accounting System to apply to public improvement projects exceeding \$5,000 and constructed with Agency's own equipment or personnel. ORS 279C.310. For such public improvement projects estimated to cost more than \$200,000, or for certain road maintenance projects exceeding \$125,000, Agency shall also comply with the requirements of ORS 279C.305.

7. All previously adopted orders or other Agency actions establishing public contracting rules for Agency are hereby repealed.

8. Effective Date. This Order and associated rules shall go into effect on July 1, 2018.

DATED this _____ day of _____, 2018.

Chair,
Board of Commissioners
ATTEST:

President,
Local Contract Review Board
ATTEST:

Secretary,
Board of Commissioners

Secretary,
Local Contract Review Board

EXHIBIT A

FINDINGS IN SUPPORT OF ORDER NO. 18-27-06-01H, EXHIBIT B-2 ADOPTING ORS 279 A, B AND C PUBLIC CONTRACTING CODE RULES

ORS 279B.085 and 279C.335 authorize Housing and Community Services Agency of Lane County, dba Homes for Good Housing Agency (Agency) Board of Commissioners, sitting as Agency's local contract review board, to approve findings submitted and exemptions requested by Agency's Board of Commissioners upon adoption of appropriate findings, to establish special selection, evaluation and award procedures for, or exempt from competition, the award of a specific contract or classes of contracts.

Pursuant to that authority, the Board makes the following findings in support of Order No. **18-27-06-01H**, which establishes exempt classes of contracts and the solicitation methods for their award:

No Findings Required

Pursuant to ORS 279A.025 and 279A.055, the Agency is not required to adopt findings with respect to the solicitation methods and awards of the following classes of contracts identified in Agency's ORS 279A, B, and C Public Contracting Rules 2016, Class Exemptions:

E-4	Contracts for Price Regulated Items
E-6	Investment Contracts
E-12	Insurance, Employee Benefit
E-17	Personal Service Contracts
E-18	Liability Insurance Contracts

The above Rules govern subjects specifically authorized by state law and, therefore, require no local exemption.

Specific Findings for Public Improvement Class Exemption (Exhibit B-2, Agency Rules: Chapter 137, Division 49, Sections 600 et. seq.)

The Board approves the following specific findings for the use of a Request for Proposal alternative contracting method for public improvement contracts estimated to cost over \$100,000 and also finds that the establishment of this class of contracts and the method approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

2. The awarding of public improvement contracts under each exemption will result in substantial cost savings to Agency.

These conclusions are based on the following general findings:

- A. Operational, budget, and financial data. Where various criteria, which may or may not include cost, must be weighed in order to select an appropriate contractor for the desired project, the formal competitive bidding process costs of up to \$7,000 are a significant budgetary waste in that the most qualified contractor for the project may not be the lowest responsible bidder;
- B. Public benefits. Exempting contracts from competitive bidding requirements and instead utilizing statutory competitive proposal procedures will protect and preserve public funds, enable greater competition between the most qualified contractors, and result in a better product which meets the public's and Agency's needs;
- C. Value engineering, Specialized expertise required, Technical complexity. Only through a competitive proposal process can Agency weigh, evaluate and select the type of expertise needed to address the technical complexities of a particular public improvement project. Competitive proposal allow the Agency to determine which contractor may best provide such services. These are qualities not reflected in cost, where a determination on cost alone could forfeit these valuable and essential attributes;
- D. Public safety. Utilizing a competitive proposal process as opposed to competitive bidding can ensure high quality, more safely constructed facilities through the construction period, and after completion. Capitalizing upon design and construction planning and compatibility can also allow earlier use of public facilities even while construction continues;
- E. Market conditions. The increased availability of and need for technical expertise, value engineering, or other types of specialized expertise, as well as a need to investigate the compatibility, experience and availability of contractors require that certain public improvement contracts be awarded based upon an evaluation of a number of criteria, rather than simply cost.

Specific Findings for Special Classes and Methods of Award for Contracts Other Than Public Improvements (Exhibit B-2, Class Exemptions).

The Board approves the specific findings for the establishment of special solicitation methods for the classes of public contracts described below and also finds that the establishment of each class of contracts and methods approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts because such exemptions still require alternative contracting procedures, ensuring: (1) reasonable competition; (2) the best contract price for the public; and (3) a cost-effective process for both contractors and Agency;
2. The awarding of public contracts under these exemptions will result in substantial cost savings to Agency because Agency will avoid costs associated with unnecessary documentation and procedures, where it is unmerited by the type and/or relatively low cost of the contracts; and
3. The awarding of public contracts pursuant to any of the requested exemptions substantially promotes the public interest in a manner that could not practicably be realized by formal competitive solicitation procedures, given the fact that such exemptions facilitate smooth operation of Agency's administration and operations, include procedures and mechanisms to ensure the best product, service or outcome is obtained at the least cost to the public and Agency, and identified classes address areas of public contracting left unresolved by state statute which are essential for Agency's operations, such as awarding personal service contracts, purchasing used personal property, and disposing of surplus personal property.

Specifically, the Board finds:

E-2 – Advertising Contracts.

Alternate Award Process. In Agency's discretion. The process selected may be competitive or non-competitive.

Cost Savings and Other Benefits. Size of and frequency of average advertisement (including all notices required to be published by Agency) does not justify the cost of solicitation. Period of time from recognition of need to advertise until advertising date is too short to issue solicitation.

Effect on Competition. The potential market is limited because not all advertisers work in every market. Choice of advertising medium is somewhat price sensitive, but primarily driven by location and size of circulation in comparison with Agency's target audience.

No Favoritism. Not applicable due to the lack of competitors and specialized contracting needs.

E-3 – Equipment Repair and Overhaul.

Alternate Award Process. As needed, in Agency's discretion.

Cost Savings and Other Benefits.

1. Pre-contract pricing is impossible
2. Agency has discretion to decide whether costs of solicitation are justified in relationship to size of contract and availability of skilled technicians to repair the specific equipment.
3. Delay required for solicitation would impair Agency's ability to respond to equipment breakdown and be injurious to the public interest.
4. Experience with contractor is crucial because reliability over the course of several projects is important.

Effect on Competition. Allows contractor to be selected based on ability to provide accurate, reliable and fast service.

Effect on Favoritism. Favoritism will not be greater than if statutory request for proposals process is used.

E-5 - Copyrighted Materials.

Alternate Award Process. As needed, in Agency's discretion.

Cost Savings and Other Benefits. Necessary to allow Agency to acquire special needs products that are unique.

Effect on Competition. None. There is no competitive market for a unique product. Copyrighted materials are generally acquired from a sole-source copyright holder, as used property, or by donation.

No Favoritism. Not applicable due to the lack of competitors and specialized contracting needs.

E-7 – Requirements Contracts.

Alternate Award Process. Original contract must be based on a competitive process.

Cost Savings and Other Benefits. Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

Effect on Competition. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years.

Effect on Favoritism. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years.

E-8 – Office Copier Purchases.

Alternate Award Process. Original contract must be based on a competitive process.

Cost Savings and Other Benefits. Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

Effect on Competition. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years. In addition, rule requires evaluation and award based upon multiple factors, not just cost.

Effect on Favoritism. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years. In addition, rule requires evaluation and award based upon set factors, in addition to cost.

Other Factors. Allows Contracting Agency to address emergency circumstances. Cannot anticipate when immediate replacement or repairs will be needed to ensure normal operations.

E-9 - Manufacturer Direct Supplies.

Alternate Award Process. Subject to cost saving analysis.

Cost Savings and Other Benefits. Allowed only after a formal solicitation is completed and manufacturer's price is less than offers received. Cost of formal solicitation, therefore not merited.

Effect on Competition. None. Allowed only after assessment of manufacturer's costs to distributor within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

Effect on Favoritism. None. Allowed only after assessment of manufacturer's costs to distributor within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

Other Factors. Allowed on a contract-by-contract basis and shall not result in an ongoing price agreement, further fostering competition.

E-10 – Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt.

Alternate Award Process. Intermediate procurement process.

Cost Savings and Other Benefits. Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

Effect on Competition. Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

Effect on Favoritism. Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

E-11 – Hazardous Material Removal; Oil Cleanup.

Alternate Award Process. Rule encourages competitive procedures to the extent reasonable under the circumstances.

Cost Savings and Other Benefits. Avoids unnecessary cost and delay associated with procurement procedures when most qualified available contractor required for immediate performance. Primary consideration is public safety and compliance with hazardous material laws.

Effect on Competition. Minimal, given competitive procedures encouraged by Rule and supporting findings describing circumstance requiring clean up.

Effect on Favoritism. Minimal, given competitive procedures encouraged by Rule and supporting findings describing circumstance requiring clean up.

Other Factors. Exemption necessary to ensure Agency's ability to comply with State law governing hazardous materials.

E-13 – Medical and Laboratory Supplies.

Alternate Award Process. Direct award to different vendors allowed, following initial competitive solicitation process.

Cost Savings and Other Benefits. Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

Effect on Competition. Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

Effect on Favoritism. Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

E-14 – Concession Agreements.

Alternate Award Process. When in Agency's best interest, a competitive proposal solicitation will be used.

Cost Savings and Other Benefits. Allows Agency to take advantage of unique revenue opportunities.

Effect on Competition. Responds to unique opportunities for which the number of competitors may range from none to many.

Effect on Favoritism. No impact. Responds to unique opportunities.

Other Factors. Not a contract for the acquisition or disposal of goods, or services or public improvements. Most similar to personal services contract because the quality of the concession may be more important than price factors. Variation in types and sizes of concession opportunities is too great to provide a single method of solicitation. Statutory public contracting requirements may not apply. May not be a public contract. Most similar to personal services contract. Findings may not be required.

E-15 – Used Personal Property, Purchase of.

Alternate Award Process. Rule requires individualized ORS 279B.085 findings and an intermediate procurement process, where feasible.

Cost Savings and Other Benefits. Allows Agency to take advantage of unique opportunity to require needed goods and services for discounted prices.

Effect on Competition. No impact. Responds to unique opportunities.

Effect on Favoritism. No impact. Responds to unique opportunities.

E-16 – Surplus Personal Property, Disposition of.

Alternate Award Process. Any means in Agency's best interest, after making individualized ORS 279B.085 findings. Items with a residual value of more than \$10,000 require local contract review board prior authorization.

Cost Savings and Other Benefits.

1. Avoids unnecessary solicitation expense by allowing Agency to determine whether cost of solicitation is justified by value of surplus property.
2. Allows Agency to establish programs for donation to charitable organizations.

Effect on Competition. No impact. Responds to unique opportunities.

Effect on Favoritism. No impact. Responds to unique opportunities.

Other Factors. Variations in the type, quantity, quality and opportunities for recycling of surplus property are too large to have this class of contracts governed by a single solicitation method.

FEDERAL GRANT PROCUREMENT POLICY

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FEDERAL GRANT PROCUREMENT POLICY**1.0 INTRODUCTION**

- 1.1 General.** Established for the Homes for Good (hereinafter, “the Agency”) by Action of the Agency Board of Commissioners (Board) on 06/27/2018, this Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between the Agency and the United States Department of Housing and Urban Development (HUD), procurement requirements within the State of Oregon Weatherization Assistance Program State Plan for United States Department of Energy (DOE), Federal Regulations at 2 CFR §200.317 through §200.326, *Procurement Standards*, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHAs), and HUD Handbook 7460.8, REV 2.

2.0 GENERAL PROVISIONS

- 2.1 General.** The Agency shall:
- 2.1.1** Provide for a procurement system of quality and integrity;
 - 2.1.2** Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Agency;
 - 2.1.3** Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and valuable prices available to the Agency;
 - 2.1.4** Promote competition in contracting; and
 - 2.1.5** Assure that the Agency purchasing actions are in full compliance with applicable Federal DOE and HUD standards.
- 2.2 Application.** This Policy applies to all procurement actions of the Agency undertaken with federal funds, except as noted under “exclusions” below. However, nothing in this Policy shall prevent the Agency from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When Federal and non-Federal grant funds, or different types of Federal grant funds, are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, these federal procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.
- 2.3 Definition.** The term “procurement,” as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.
- 2.4 Exclusions.** This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income (e.g., fee-for-service revenue under 24 CFR §990) and defederalized funds. These excluded areas are subject to applicable State and local requirements.
- 2.5 Changes in Laws and Regulations.** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.
- 2.6 Public Access to Procurement Information.** Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in Oregon Public Records law.

3.0 ETHICS IN PUBLIC CONTRACTING

- 3.1 General.** The Agency hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State, or local law. Agency recognizes that this policy summarizes, but does not supersede, Oregon ethics law, with which all Agency public officials must comply.

FEDERAL GRANT PROCUREMENT POLICY

- 3.2 Conflicts of Interest.** No employee, officer, Board member, or agent of the Agency shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:
- 3.2.1** An employee, officer, Board member, or agent involved in making the award;
 - 3.2.2** His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);
 - 3.2.3** His/her partner; or
 - 3.2.4** An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
- 3.3 Gratuities, Kickbacks, and Use of Confidential Information.** No officer, employee, Board member, or agent of the Agency shall ask for or accept gratuities, favors, or items of more than nominal value (i.e. inexpensive hat with logo) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.
- 3.4 Prohibition against Contingent Fees.** Contractors wanting to do business with the Agency must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.
- 3.5 Penalties.** The following sanctions for violations of the ethical standards described in this Section 3.0 are hereby adopted as follows:

Per the Homes for Good Code of Conduct

4.0 PROCUREMENT PLANNING

- 4.1 General.** Planning is essential to managing the procurement function properly. Hence, the Agency will periodically review its record of prior purchases, as well as future needs, to:
- 4.1.1** Find patterns of procurement actions that could be performed more efficiently or economically;
 - 4.1.2** Maximize competition and competitive pricing among contracts and decrease the Agency's procurement costs;
 - 4.1.3** Reduce Agency administrative costs;
 - 4.1.4** Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests); and
 - 4.1.5** Minimize errors that occur when there is inadequate lead time.

Consideration shall be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

5.0 PROCUREMENT METHODS

- 5.1 Micro Purchases.** Purchases of less than \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act), also known as Micro Purchases, may be awarded without soliciting competitive quotes, provided the quote is considered reasonable. To the greatest extent feasible, and to promote competition, Micro-Purchases should be distributed among qualified sources.

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- 5.2 Small Purchase Procedures.** For any amounts above the Micro Purchase threshold, but not exceeding \$150,000, the Agency may use small purchase procedures. Under small purchase procedures, the Agency shall obtain a reasonable number of quotes (preferably three). Quotations for Small Purchases (QSP), or quotes, may be obtained orally (either in person or by phone), by fax, in writing, through e-procurement, or by any other reasonable method.

Award shall be made to the responsive and responsible vendor that submits the lowest cost to the Agency. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

The Agency shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that apply to purchases exceeding the Micro Purchase threshold.

- 5.3 Sealed Bids.** Sealed bidding, also known as Invitation for Bids (IFB), shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this Policy. To conduct an IFB, the Agency publicly solicits bids and awards a firm, fixed-price contract (lump sum or unit price) to the responsive and responsible bidder whose bid, conforming with all the material terms and conditions of the IFB, is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$150,000.

5.3.1 Conditions for Using Sealed Bids. The Agency shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.

5.3.2 Solicitation and Receipt of Bids. An IFB is issued which includes: 1) the specifications and all contractual terms and conditions applicable to the procurement; 2) a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation; and 3) the time and place for both receiving the bids and the public bid opening.

All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw its bid at any time prior to the bid opening.

5.3.3 Notice.

5.3.3.1 Method. The Agency must use one or more of the following methods of notice provided that the method employed provides for meaningful competition:

5.3.3.1.1 Advertising in newspapers or other print mediums of local or general circulations.

5.3.3.1.2 Advertising in various trade journals or publications (for construction).

5.3.3.1.3 E-Procurement. The Agency may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR §200.317 through §200.326, State and local requirements, and the Agency's procurement policy.

5.3.3.2 Time Frame. Notice should run not less than once each week for two consecutive weeks.

5.3.3.3 Form. Notices/advertisements should state, at a minimum: 1) the place, date, and time that the bids or proposals are due; 2) the solicitation number; 3) a contact that can provide a copy of, and information about, the solicitation; and 4) a brief description of the project or needed item(s).

- 5.3.4 Time Period for Submission of Bids.** A minimum of 30 days shall be provided between the publication of the first advertisement and closing, unless the Executive Director allows for a shorter period under extraordinary circumstances.

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- 5.3.5 Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, which shall then be made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
- 5.3.6 Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document and the intended bid amount is unclear. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the Agency or fair competition shall not be permitted.
- 5.4 Competitive Proposals.** Unlike sealed bidding, the competitive proposal method, also known as a Request for Proposals (RFP), permits: 1) consideration of technical factors other than price; 2) discussion with offerors concerning offers submitted; 3) negotiation of contract price or estimated cost and other contract terms and conditions; and 4) revision of proposals based upon negotiations prior to final contractor selection. Award is normally made on the basis of the proposal that represents the best overall value to the Agency, considering price and other factors (e.g., technical expertise, past experience, quality of proposed staffing, etc.) set forth in the solicitation and not solely on the lowest price.
- 5.4.1 Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold. Only under limited circumstances would construction services be appropriately procured by competitive proposals. Accordingly, construction services will most typically be procured utilizing the sealed bid (IFB) or small purchase procedures (QSP).
- 5.4.2 Form of Solicitation.** Other than A/E services, developer-related services and energy performance contracting, competitive proposals shall be solicited through the issuance of an RFP.
- 5.4.3 Notice.** The RFP shall be advertised in the same manner as an IFB, per Section 5.3.3, above.
- 5.4.4 Time Period for Submission of Bids.** A minimum of 15 days shall be provided between the publication of the first advertisement and closing, unless the Executive Director allows for a shorter period under extraordinary circumstances.
- 5.4.5 RFP Contents.** The RFP shall clearly identify the importance and relative value of each of the evaluation factors, as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The Agency may assign price a specific weight in the evaluation factors or the Agency may consider price in conjunction with technical factors. In either case, the method for evaluating price shall be established in the RFP.
- 5.4.6 Evaluation.** The proposals shall be evaluated only on the factors and evaluation plan stated in the RFP. Unless otherwise established within the RFP, all responsive proposals shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest and to sign a Non-Disclosure statement. The Committee shall prepare an Evaluation Report, summarizing the results of the evaluation, prior to award of a contract.
- 5.4.7 Negotiations.** Negotiations may be conducted with all proposers who submit a proposal determined to have a reasonable chance of being selected for award. This determination is based on the relative

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score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP.

The primary object of negotiations is to maximize the Agency's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each proposer still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award.

The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform a proposer that its price is considered by the Agency to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all proposers the cost or price that the Agency's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one proposer's price in an attempt to get another proposer to lower its price) is prohibited.

Negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract.

Proposers shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No proposer shall be given any information about any other proposer's proposal, and no proposer shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the Agency and proposers that are undertaken with the intent of allowing the proposer to revise its proposal.

5.4.8 Award. After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the Agency provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

5.5 A/E Services. The Agency shall contract for A/E services using Qualifications-based Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services even if architectural/engineering firms are potential source to perform the desired service.

5.6 Noncompetitive Proposals.

5.6.1 Conditions for Use. Procurement by noncompetitive proposals (sole- or single-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:

5.6.1.1 The item is available only from a single source, based on a good faith review of available sources;

5.6.1.2 An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the Agency, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;

5.6.1.3 The federal awarding agency expressly authorizes the use of noncompetitive proposals in response to a written Agency request; or

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- 5.6.1.4** After solicitation of a number of sources, competition is determined inadequate.
- 5.6.2 Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole-source procurements. The justification, to be included in the procurement file, should include the following information:
- 5.6.2.1** Description of the procurement;
- 5.6.2.2** History of prior purchases and their nature (competitive vs. noncompetitive);
- 5.6.2.3** The specific exception in Section 5.6.1 which applies;
- 5.6.2.4** Statement as to the unique circumstances that require award by noncompetitive proposals;
- 5.6.2.5** Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
- 5.6.2.6.** Statement as to efforts that will be taken in the future to promote competition for the requirement; and
- 5.6.2.7** Signature by the Contracting Officer's supervisor.
- 5.6.3 Price Reasonableness.** The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.
- 5.7 Cooperative Purchasing/Intergovernmental Agreements.** The Agency may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Agency may use Federal or State excess and surplus property instead of purchasing new equipment and property, if feasible, and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have originally been procured in accordance with 2 CFR §200.317 through §200.326.

6.0 CANCELLATION OF SOLICITATIONS

- 6.1** Any solicitation may be cancelled before offers are due if:
- 6.1.1** The purchase, service or construction is no longer required;
- 6.1.2** The funds are no longer available;
- 6.1.3** Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
- 6.1.4** For good cause, when in the best interest of the Agency.
- 6.2** A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
- 6.2.1** The supplies or services (including construction) are no longer required;
- 6.2.2** Ambiguous or otherwise inadequate specifications were part of the solicitation;
- 6.2.3** All factors of significance to the Agency were not considered;
- 6.2.4** Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

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- 6.2.5 There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
- 6.2.6 For good cause, when in the best interest of the Agency.
- 6.3 The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.
- 6.4 A notice of cancellation shall be sent to all offerors and, if appropriate, shall explain that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items.
- 6.5 If problems are found with the specifications, the Agency should cancel the solicitation, revise the specifications, and re-solicit using an IFB.

7.0 INDEPENDENT COST ESTIMATE

- 7.1 **General.** For all purchases above the Micro Purchase threshold, the Agency shall prepare an independent cost estimate prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

8.0 COST AND PRICE ANALYSIS

- 8.1 **General.** The Agency shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.
 - 8.1.1 **Micro Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer's determination that the price obtained is reasonable, which may be based on the Contracting Officer's prior experience or other factors.
 - 8.1.2 **Small Purchases.** A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the independent cost estimate, or any other reasonable basis.
 - 8.1.3 **Sealed Bids.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the independent cost estimate, and where the Agency cannot reasonably determine price reasonableness, the Agency must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.
 - 8.1.4 **Competitive Proposals.** The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, the Agency must compare the price with the independent cost estimate. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the independent cost estimate, the Agency must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.
 - 8.1.5 **Contract Modifications.** A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$150,000.
- 8.2 If all otherwise acceptable bids received in response to an IFB are at unreasonable prices, an analysis should be conducted to see if there is a problem with either the specifications or the Agency's cost estimate. If both are determined adequate but bid prices are unreasonable, the Contracting Officer may cancel the solicitation and either
 - 8.2.1 Re-solicit using an RFP; or

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- 8.2.2** Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the Agency's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.

9.0 BONDING REQUIREMENTS

- 9.1 General.** The standards under this section apply to construction contracts that exceed \$150,000. There are no bonding requirements for micro or small purchases, or for competitive proposals. The Agency may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts generally need not require bid bonds.

- 9.1.1 Bid Bonds.** For construction contracts exceeding \$150,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.

- 9.1.2 Payment and Performance Bonds.** For construction contracts exceeding \$150,000, the successful bidder shall furnish assurances of completion as follows:

9.1.2.1 A performance bond in a penal sum of 100% of the contract price; and

9.1.2.2 A separate payment bond in a penal sum of 100% of the contract price.

These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State of Oregon. Individual sureties shall not on bonds securing be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

10.0 CONTRACTOR QUALIFICATIONS AND DUTIES

10.1 Contractor Responsibility

- 10.1.1** The Agency shall not award any contract until the intended awardee has been determined to be responsible. A responsible awardee must:

10.1.1.1 Have adequate financial resources to perform the contract, or the ability to obtain them;

10.1.1.2 Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;

10.1.1.3 Have a satisfactory performance record;

10.1.1.4 Have a satisfactory record of integrity and business ethics;

10.1.1.5 Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

10.1.1.6 Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

10.1.1.7 Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

- 10.1.2** If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

- 10.2 Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance

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with HUD regulations (2 CFR §200.317 through §200.326) or by other Federal agencies, (e.g., DOE or Department of Labor for violation of labor regulations) when necessary to protect subrecipient agencies in their business dealings. Prior to issuance of a contract, Agency staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search.

- 10.3 Vendor Lists.** All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

11.0 CONTRACT PRICING ARRANGEMENTS

11.1 Contract Types. Any type of contract which is appropriate to the procurement and which will promote the best interests of the Agency may be used, **provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used.** All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the Agency. For all cost reimbursement contracts, the Agency must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

11.2 Options. Options for additional quantities or performance periods may be included in contracts, provided that:

11.2.1 The option is contained in the solicitation;

11.2.2 The option is a unilateral right of the Agency;

11.2.3 The contract states a limit on the additional quantities and the overall term of the contract;

11.2.4 The options are evaluated as part of the initial competition;

11.2.5 The contract states the period within which the options may be exercised;

11.2.6 The options may be exercised only at the price specified in or reasonably determinable from the contract; and

11.2.7 The options may be exercised only if determined to be more advantageous to the Agency than conducting a new procurement.

12.0 CONTRACT CLAUSES

12.1 Contract Pricing Arrangements. All contracts shall identify the contract pricing arrangement, as well as other pertinent terms and conditions, as determined by the Agency.

12.2 Required Forms. The forms HUD-5369; 5369-A; 5369-B; 5369; 5370; 5370-C (Sections I and II); 51915; and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$150,000, as well as any forms/clauses as required by HUD for small purchases, shall be used, as applicable, in all corresponding solicitations and contracts issued by the Agency.

12.3 Required Contract Clauses: The Agency shall ensure that each contract executed by the Agency contains the required contract clauses detailed within 2 CFR §200.326 and Appendix II, as applicable.

13.0 CONTRACT ADMINISTRATION

13.1 General. The Agency shall maintain a system of contract administration designed to ensure that Contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

FEDERAL GRANT PROCUREMENT POLICY**14.0 SPECIFICATIONS**

14.1 General. All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the Agency's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

14.2 Limitation. The following types of specifications shall be avoided:

14.2.1 Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);

14.2.2 Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

15.0 APPEALS AND REMEDIES

15.1 General. It is Agency policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to the federal funding agency unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

15.2 Protests. Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.

15.3 Contractor Claims. After contract execution, Contractor claims shall be submitted and administered pursuant to the contract terms, as governed by HUD-5370 or other applicable federal general conditions form.

16.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES

16.1 Required Efforts. Consistent with Presidential Executive Orders 11625, 12138, and 12432, Section 3 of the HUD Act of 1968, and 2 CFR §200.321, all necessary efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and labor surplus area firms located in or owned in substantial part by persons residing in the area of the Agency project are used when possible. Such efforts shall include, but shall not be limited to:

16.1.1 Including such firms, when qualified, on solicitation mailing lists;

16.1.2 Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;

16.1.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;

16.1.4 Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;

16.1.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce;

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- 16.1.6** Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR §135 (Section 3 businesses); and
- 16.1.7** Requiring prime contractors, when subcontracting is anticipated, to take the steps outlined in 16.1.1 through 16.1.6, above.
- 16.2 Goals.** Participation goals shall be established periodically for small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in Agency prime contracts and subcontracting opportunities.
- 16.3 Definitions.**
- 16.3.1** A small business is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR §121 should be used to determine business size.
- 16.3.2** A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
- 16.3.3** A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
- 16.3.4** A "Section 3 business concern" is as defined under 24 CFR §135.
- 16.3.5** A labor surplus area business is defined as a business which, together with its first-tier subcontractors, is capable of performing more than 50% of the value of the contract in an area of concentrated unemployment or underemployment, as defined in 20 CFR §654, Subpart A, and as identified as a labor surplus area in the Employment and Training Administration publication.

17.0 DOCUMENTATION

- 17.1 Required Records.** The Agency must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not necessarily be limited to, the following:
- 17.1.1** Rationale for the method of procurement (if not self-evident);
- 17.1.2** Rationale of contract pricing arrangement (also if not self-evident);
- 17.1.3** Reason for accepting or rejecting the bids or offers;
- 17.1.4** Basis for the contract price (as prescribed in this handbook);
- 17.1.5** A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- 17.1.6** Basis for contract modifications; and
- 17.1.7** Related contract administration actions.
- 17.2 Level of Documentation.** The level of documentation should be commensurate with the value of the procurement.
- 17.3 Record Retention.** Records are to be retained for a period of three years after final payment and all matters pertaining to the contact are closed.

ORS 279A, B & C PUBLIC CONTRACTING RULES

2016

Exhibit B-2

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PUBLIC CONTRACTING RULES 2016

DIVISION 46

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

137-046-0100

Application; Federal Law Supremacy

(1) These Public Contracting Rules (Rules) set forth the rules of procedure for Public Contracting of Contracting Agencies subject to these Rules. These Rules consist of the following four divisions:

(a) This division 46, which is applicable to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods or Services, as defined in ORS 279B.005;

(c) Division 48, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) In the event of conflict between rules in this division 46 and rules in divisions 47, 48 and 49, the rules in divisions 47, 48 and 49 take precedence over the rules in this division 46.

(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 46 rules become effective upon adoption, and apply to Public Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & ORS 279A.065

137-046-0110

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

(3) “**Bid**” means a written response to an Invitation to Bid.

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

(5) “**Code**” means the Public Contracting Code, as defined in ORS 279A.010.

(6) “**Competitive Range**” means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with Rules 137-047-0262 or 137-049-0650.

(7) “**Contract**” means a “Public Contract,” as defined in ORS 279A.010.

(8) “**Contract Price**” means, as the context requires, (a) the maximum monetary obligation that a Contracting Agency agrees to pay under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract, (b) the maximum not-to-exceed amount of payments specified in the Contract, or (c) the unit prices for Goods or Services or Personal Services set forth in the Contract.

(9) “**Contracting Agency**” means a public body authorized by law to conduct a procurement. “Contracting Agency” includes any person authorized by a Contracting Agency to conduct procurements on the Contracting Agency’s behalf.

(10) “**Contract Review Authority**” means the Local Contracting Agency’s Local Contract Review Board determined as set forth in ORS 279A.060.

(11) “**Contractor**” means the Person with whom a Contracting Agency enters into a Contract.

- (12) **"DBE Disqualification"** means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.
- (13) **"Descriptive Literature"** means the Offeror's materials submitted to provide information concerning the products or services available in response to a Solicitation Document.
- (14) **"Electronic Advertisement"** means notice of a Contracting Agency's request for Offers, request for quotes, request for information or other document inviting participation in the Contracting Agency's Procurements available over the Internet via (a) the World Wide Web or some other Internet protocol; or (b) a Contracting Agency's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
- (15) **"Electronic Offer"** means a response to a Contracting Agency's request for Offers or request for quotes submitted to a Contracting Agency via email or through the Contracting Agency's Electronic Procurement System.
- (16) **"Electronic Procurement System"** means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.
- (17) **"Goods and Services"** or **"Goods or Services"** has the meaning set forth in ORS 279B.005(1)(a).
- (18) **"Invitation to Bid"** or **"ITB"** means all documents used for soliciting Bids in accordance with either ORS 279B.055, or 279C.335.
- (19) **"Offer"** means a written response to a Solicitation Document.
- (20) **"Offeror"** means a Person who submits an Offer.
- (21) **"Opening"** means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- (22) **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity that has the legal capacity to enter into a contract.
- (23) **"Personal Services"** means the services or type of services performed under a Personal Services Contract.
- (24) **"Personal Services Contract"** or **"Contract for Personal Services"** means a contract primarily for the provision of services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers, unless specifically exempt from the Code. For any single contract or class of contracts, the Contracting Agency shall have the discretion to determine whether additional types of services not specifically mentioned in this definition are personal services.
- (25) **"Product Sample"** means a representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.
- (26) **"Proposal"** means a written response to a Request for Proposals.
- (27) **"Responsible Offeror"** (also, **"Responsible Bidder"** or **"Responsible Proposer,"** as applicable) means a Person that has submitted an Offer and meets the standards set forth in Rules 137-047-0640 or 137-049-0390(2), and that has not been debarred or disqualified by the Contracting Agency under Rules 137-047-0575 or 137-049-0370. When used alone, **"Responsible"** means meeting the aforementioned standards.
- (28) **"Responsive Offer"** (also, **"Responsive Bid"** or **"Responsive Proposal,"** as applicable) means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, **"Responsive"** means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
- (29) **"Request for Proposals"** or **"RFP"** means all documents used for soliciting Proposals in accordance with either ORS.279B.060, 279C.110 or Rule 137-049-0650.
- (30) **"Signed"** or **"Signature"** means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.
- (31) **"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 ORS Chapter 279C.
- (32) **"Specification"** means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(33) **“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.

(34) **“Written”** or **“Writing”** means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-046-0120

Policy

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.015 & ORS 279A.065

137-046-0130

Application of the Code and Rules; Exceptions

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

(2) Neither the Code nor these Rules apply to the contracts or the classes of contracts described in ORS 279A.025(2).

(3) Contracting Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program pursuant to ORS 279A.180 without following the procedures set forth in ORS 279B.050 through ORS 279B.085.

(4) Contracting Agencies otherwise subject to the Code and these Rules 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 ORS 279A.225, or ORS 279B.050 through ORS 279B.085. However, Contracting Agencies must enter into such contracts in accordance with any applicable administrative rules promulgated by the Department of Administrative Services.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.050, ORS 279A.055, ORS 279A.065 & ORS 279A.180

MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

137-046-0200

Affirmative Action; Limited Competition Permitted

(1) Pursuant to ORS 279A.100, a Contracting Agency may limit competition on Public Contracts for Goods and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the Public Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.100

137-046-0210

Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) As set forth in ORS 279A.105, a Contracting Agency may require a contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.

(2) A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The contractor certifies in writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture the goods or complete the services under the contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a contractor's subcontractor's employees or subcontractors constitute a substantial number.

(3) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a business that is a service-disabled veteran owns.

(4) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any public contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (d) and (e) of this section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely request. The Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(d) Notice of Disqualification. The Contracting Agency shall provide Written notice of the Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service, or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

(5) **Contract and Subcontract Conditions**. If a Contracting Agency awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and 200.045(3), or awards a Contract under ORS 279A.100:

(a) The Contracting Agency must provide, as a material condition of the Contract:

(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the Award of the Contract);

(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the Award of the subcontract);

(D) That the Contracting Agency may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (5) of this rule, the Contracting Agency must verify the Contractor's and any subcontractor's compliance with subsection (5)(a) of this rule.

(c) Subparagraph (5)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the

business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (5) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.105, ORS 279A.107 & ORS 279A.110

CONTRACT PREFERENCES

137-046-0300

Preference for Oregon Goods and Services; Nonresident Bidders

(1) **Award When Offers Identical.** When a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Contracting 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 Contracting 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 Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services or Personal Services manufactured or produced in Oregon, then the Contracting 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.** A Contracting 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 Contracting Agency determines, in writing, that two or more Proposals are equally advantageous to the Contracting Agency.

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with ORS 279B.070(4).

(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, Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Contracting Agency, any information the Contracting Agency determines is appropriate and necessary to allow the Contracting Agency to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. A Contracting 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 Contracting 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 Contracting 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.

(5) **Discretionary Preference and Award.** Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further

preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065 & ORS 279A.128

Stats. Implemented: ORS 279A.065, ORS 279A.120 & ORS 279A.128

137-046-0310

Reciprocal Preferences

(1) When evaluating Bids pursuant to Rules 137-047-0255, 137-047-0257 or 137-049-0390, Contracting Agencies 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. A Contracting Agency may rely on the list prepared and maintained by the Department 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.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.120

137-046-0320

Preference for Recycled Materials

(1) In comparing goods from two or more Offerors, if at least one Offeror offers goods manufactured from recycled materials, and at least one Offeror does not, a Contracting Agency shall select the Offeror offering goods manufactured from recycled materials if each of the conditions specified in ORS 279A.125(2) exists. When making the determination under ORS 279A.125(2)(d), the Contracting Agency shall consider the costs of the goods following any adjustments the Contracting Agency makes to the price of the goods after evaluation pursuant to Rule 137-046-0310.

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.125

COOPERATIVE PROCUREMENT

137-046-0400

Authority for Cooperative Procurements

(1) Contracting Agencies 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) Each Purchasing Contracting 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, ORS 279B.060 or ORS 279B.085 consistent with ORS 279A.200(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

137-046-0410

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.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

137-046-0420

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.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.210

137-046-0430

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.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

137-046-0440

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

(1) A Purchasing Contracting Agency that wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement must publish notice of its intent to do so if the Purchasing Contracting Agency estimates that it will spend in excess of \$250,000 on Goods and Services or Personal Services acquired under the Contract or Price Agreement.

(2) For purposes of determining whether a Purchasing Contracting Agency must give the notice required by Rule 137-046-0440(1), a Purchasing Contracting Agency will spend in excess of \$250,000 for Goods and Services acquired under a Contract or Price Agreement arising out of a Permissive Cooperative Procurement if:

- (a) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract or Price Agreement 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 or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of \$250,000; or

(c) At the time the Purchasing Contracting Agency enters into the Contract or Price Agreement, 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 Personal Services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.

(3) The notice of intent required by Rule 137-046-0440(1) shall contain the information required by ORS 279A.215(2)(b), and Agency shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). Unless the Purchasing Contracting Agency sets forth a different time period in the notice, the Purchasing Contracting Agency shall give the notice required by this Section no fewer than 7 days before the deadline for submitting comments regarding the Purchasing Contracting Agency's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(4) An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in Rules 137-046-0440(1) and (3) 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 or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.

(5) The Purchasing Contracting 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).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

137-046-0450

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.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

137-046-0460

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 ORS 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 ORS 279B.060(4) with respect to the Purchasing Contracting Agency; or

(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 279B.055(4)(b) and (c).

(3) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a contract or price agreement through an Interstate Cooperative Procurement as set forth in ORS 279A.220(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

137-046-0470

Protests and Disputes

(1) If a bidder or proposer wishes 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, the bidder or proposer shall direct the protest to the Administering Contracting Agency, and the bidder or proposer shall make such protest in accordance with ORS 279B.400 through ORS 279B.425. If the Administering Contracting Agency is not subject to the Code, then bidders or proposers shall make such protests in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) 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.

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.225

137-046-0480

Contract Amendments

A purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Rule 137-047-0800 for Goods and Service Contracts and Rule 137-049-0910 for Public Improvement Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

PUBLIC CONTRACTING RULES 2016

DIVISION 47

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES GENERAL PROVISIONS

137-047-0100

Application

These division 47 rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods or Services. These division 47 rules become effective upon adoption, and apply to Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

137-047-0110

Definitions

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

(2) "**Affected Person**" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.

(3) "**Scope**" means the range and attributes of the Goods or Services described in the applicable Procurement document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

SOURCE SELECTION

137-047-0250

Methods of Source Selection; Feasibility Determination; Cost Analysis

(1) Except as permitted by ORS 279B.065 through 279B.085 and 279A.200 through 279A.225, Contracting Agency shall Award a Contract for Goods or Services, or both based on Offers received in response to either competitive sealed Bids pursuant to 279B.055 or competitive sealed Proposals pursuant to 279B.060.

(2) Written Cost Analysis for Contracts for Services. Before conducting the Procurement of a Contract for Services that is subject to ORS 279B.030, Contracting Agency must, in the absence of a determination under ORS 279B.036 that performing the services with Contracting Agency's own personnel and resources is not feasible, conduct a Written cost analysis.

(3) Feasibility Determination for Contracts for Services. Contracting Agency may proceed with the procurement of a Contract for Services without conducting a cost analysis under ORS 279B.030, if the Contracting Agency makes Written findings that one or more of the special circumstances described in ORS 279B.036, make the Contracting Agency's use of its own personnel and resources to provide the Services not feasible.

(4) Special Circumstances. The special circumstances identified in ORS 279B.036 that require a Contracting Agency to procure the Services by Contract include any circumstances, conditions or occurrences that would make the Services, if performed by the Contracting Agency's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of the Contracting Agency.

(5) Written Cost Analysis under ORS 279B.033.

(a) Basic Comparison. The Written cost analysis must compare an estimate of the Contracting Agency's cost of performing the Services with an estimate of the cost a potential Contractor would incur in performing the Services. However, the Contracting Agency may proceed with the Procurement for Services only if it determines that the Contracting Agency would incur more cost in performing the Services with the Contracting Agency's own personnel than it would incur in procuring the Services from a Contractor. In making this determination, the cost the Contracting Agency would incur in procuring the Services from a Contractor includes the fair market value of any interest in equipment, materials or other assets the Contracting Agency will provide to the Contractor for the performance of the Services.

(b) Costs of Using Contracting Agency's Own Personnel and Resources. When estimating the Contracting Agency's cost of performing the Services, the Contracting Agency shall consider cost factors that include:

(A) The salary or wage and benefit costs for the employees of the Contracting Agency who would be directly involved in performing the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the Services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the Services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, equipment and supplies used or consumed in the provision of the Services.

(C) The costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services.

(D) Any costs related to stopping and dismantling a project or operation because the Contracting Agency intends to procure a limited quantity of Services or to procure the Services within a defined or limited period of time.

(E) The miscellaneous costs related to performing the Services. These costs exclude the Contracting Agency's indirect overhead costs for existing salaries or wages and benefits for administrators, and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the Services and would not be incurred unless the Contracting Agency performed the Services.

(F) ORS 279B.033(1)(a) provides that an estimate of the Contracting Agency's costs of performing the Services includes the costs described in subsections (5)(b)(A) through (E) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. A Contracting Agency may consider other reliable information that bears on the cost to the Contracting Agency of performing the Services. For example, if the Contracting Agency has accounted for its actual costs of performing the Services under consideration, or reasonably comparable Services, within the past five years, the Contracting Agency may consider those actual costs in making its estimate.

(c) Costs a Potential Contractor Would Incur. When estimating the costs a potential Contractor would incur in performing the Services, the Contracting Agency shall consider cost factors that include:

(A) The average or actual salary or wage and benefit costs for Contractors and Contractor employees;

(i) Who work in the business or industry most closely involved in performing the Services; and

(ii) Who would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services.

(B) The material costs necessary to the performance of the Services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the Services.

(C) The miscellaneous costs related to performing the Services. These miscellaneous costs include reasonably foreseeable fluctuations in the costs listed in subsections (5)(c)(A) and (B) of this rule over the expected duration of the Procurement.

(D) ORS 279B.033(1)(b) provides that an estimate of the costs a potential Contractor would incur in performing the Services includes the costs described in subsections (5)(c)(A) through (C) of this rule. Therefore, those costs do not constitute an exclusive list of cost information. Contracting Agency may consider other reliable information that bears on the costs a potential Contractor would incur. For example, if the Contracting Agency, in the past five years, received Bids or Proposals for the performance of the Services under consideration, or reasonably comparable Services, the Contracting Agency may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, Contracting Agency may consider what it actually paid out under a Contract for the same or similar Services. Contracting Agency must take into account, when considering the pricing offered in previous Bids, Proposals or Contracts, adjustments to the pricing in light of measures of market price adjustments like the consumer price indexes that apply to the Services.

(6) Decision Based on Cost Comparison. After comparing the difference between the costs estimated for the Contracting Agency to perform the Services under section (5)(b) and the estimated costs a potential Contractor would incur in performing the Services under section (5)(c), the Contracting Agency may proceed with the Procurement only if the Contracting Agency would incur more cost in performing the Services with the agency's own personnel and resources than it would incur in procuring the Services from a Contractor.

(7) Exception Based on Salaries or Wages and Benefits. If the sole reason that the costs estimated for the Contracting Agency to perform the Services under section (5)(b) exceed the estimated costs a potential Contractor would incur in performing the Services under section (5)(c) is because the average or actual salary or wage and benefit costs for Contractors and their employees estimated under subsection (5)(c)(A) are lower than the salary or wage and benefit costs for employees of the Contracting Agency under subsection (5)(b)(A), then the Contracting Agency may not proceed with the Procurement.

(8) Exception Based on Lack of Contracting Agency Personnel and Resources; Reporting. In cases in which the Contracting Agency determines that it would incur less cost in providing the Services with its own personnel and resources, the Contracting Agency nevertheless may proceed with the Procurement if, at the time the Contracting Agency intends to conduct the Procurement, the Contracting Agency determines that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them. When a Contracting Agency conducts a Procurement under this section, the Contracting Agency must make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the Contracting Agency requires them and of the basis for the Contracting Agency's decision to proceed with the Procurement.

Stat. Auth.: ORS 279A.065, OL 2009, c 880, §§ 3, 4

Stats. Implemented: ORS 279B.050, OL 2009, c 880, § 2-4

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10

137-047-0255

Competitive Sealed Bidding

(1) **Generally.** A Contracting 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 Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in 137-047-0300.

(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 Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Bids);

(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);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3));

(G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-047-0430);

(b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.055, the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contracting Agency for good cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the Contracting Agency is purchasing.

(c) Bidding and Evaluation Process.

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

(B) The Contracting 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 Contracting Agency has available concerning future use; and

(C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to Rule 137-047-0600(4)(c), the Contracting 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) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385 and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).

(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 Contracting Agency. Pursuant to ORS 279B.055, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) **Good Cause.** For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance, techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the

Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

137-047-0257

Multistep Sealed Bidding

(1) **Generally.** A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).

(2) **Phased Process.** Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.

(3) **Public Notice.** When a Contracting Agency uses multistep sealed Bidding, the Contracting Agency shall give public notice for the first phase in accordance with Rule 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under Rule 137-047-430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under Rule 137-047-0720.

(4) **Procedures Generally.** In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.

(5) **Procedure for Phase One of Multistep Sealed Bidding.**

(a) **Form.** A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth in Rule 137-047-0255(2), the multistep Invitation to Bid must state:

(A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;

(B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(D) The criteria to be used in the evaluation of unpriced submittals;

(b) Evaluation. The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

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

(a) After the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

(b) A Contracting Agency shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this Rule or the Invitation to Bid;

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

137-047-0260

Competitive Sealed Proposals

(1) **Generally**. A Contracting 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 Contracting Agency shall provide public notice of the competitive sealed Proposal as set forth in Rule 137-047-0300.

(2) **Request for Proposal**. 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;

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

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

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Proposals);

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

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

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See Rule 137-047-0430).

(b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning and land surveying services or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

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

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(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 Contracting Agency; and

(C) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to Rule 137-047-0600(4)(d), the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), 282.210, and Rules 137-046-0300 through 137-046-0330.

(e) For Contracting Agencies subject to ORS 305.385, Proposer's certification of compliance with the Oregon tax laws in accordance with ORS 305.385, as applicable and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See Rule 137-047-0262.)

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract, and identify those contractual terms and conditions, if any, subject to negotiation per Rule 137-047-0262(3). Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under Rule 137-047-0550, but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(5) **Good Cause.** For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods and Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060, ORS 279A.107 & ORS 279B.130

137-047-0261

Procedures for Competitive Range, Multi-tiered and Multistep Proposals

(1) **Generally.** A Contracting 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 Rules 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multi-step selection process that permits awards to the highest ranked proposer at any tier or step, calls for the establishment of a competitive range, or permits either serial or competitive simultaneous discussions or negotiations with one or more proposers. A Contracting Agency may employ one or more or any combination of the procedures set forth in this rule for competitive range, multi-tiered and multi-step proposals.

(2) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(3) **Exclusion Protest.** A Contracting 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 137-047-0720.

(4) **Award Protest.** A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Rule 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in Rule 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0262

Competitive Range, Discussions and Negotiations

(1) When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with Rule 137-047-0720.

(2) **Discussions.** The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

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

(b) May disclose other eligible Proposer's Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

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

- (d) At any time during the time allowed for discussions, the Contracting Agency may:
- (A) Continue discussions with a particular eligible Proposer;
 - (B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
 - (C) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice requesting best and final Offers.
- (3) **Negotiations.** Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers..
- (a) The Contracting Agency may negotiate:
 - (A) The statement of Work;
 - (B) The Contract Price as it is affected by negotiating the statement of Work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and
 - (C) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.
 - (4) **Terminating Negotiations.** At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:
 - (a) The eligible Proposer is not discussing or negotiating in good faith; or
 - (b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.
 - (c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:
 - (A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or
 - (B) Decided to cancel the Procurement under ORS 279B.100.
 - (d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:
 - (A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
 - (B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.
 - (e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.
- (5) **Best and Final Offers.** If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct the evaluations as described in Rule 137-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060

137-047-0263

Multistep Sealed Proposals

(1) **Generally.** A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279.060(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 final 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 final phase. If time is a factor, the Contracting 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 137-047-0300. Public notice is not required for the subsequent phases. However, a Contracting 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 137-047-0720.

(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 137-047-0260(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 Contracting 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.

(e) Discussion of Un-priced Technical Proposals. The Contracting 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 Contracting Agency shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.

(f) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(g) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule. No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0265

Small Procurements

(1) **Generally.** For Procurements of Goods or Services less than or equal to \$10,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process, subject to the procurement policies of Contracting Agency.

(2) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than \$12,500.

Stat. Auth.: ORS 279A.065 & ORS 279B.065

Stats. Implemented: ORS 279B.065

137-047-0270

Intermediate Procurements

(1) **Generally.** For Procurements of Goods or Services greater than \$10,000 and less than or equal to \$150,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Written Solicitations.** For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.

(3) **Negotiations.** A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.

(4) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds \$150,000 or increases the price more than twenty-five percent (25%) of the original Contract price, whichever is greater.

Stat. Auth.: ORS 279A.065 & ORS 279B.070

Stats. Implemented: ORS 279B.070

137-047-0275

Sole-Source Procurements

(1) **Generally.** A Contracting Agency may Award a Public Contract without competition as a sole-source Procurement, after documenting the procurement file with findings of current market research to support the determination that the product is available from only one seller or source. The findings shall also include:

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

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

(c) the reasons the Contracting Agency is seeking this procurement method, which shall include any of the following: (i) efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies, or services; or (ii) that the goods or services required for the exchange of software or data with other public or private agencies are available from only one source; or (iii) the particular product is for use in a pilot or an experimental project; or (iv) other findings that support the conclusion that the goods or services are available from only one source. ORS 279B.075(2)(d).

(2) **Public Notice.** If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, a Contracting 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 137-047-0300. 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 Contracting Agency shall give such public notice at least seven (7) Days before Award of the Contract, unless otherwise set forth in the notice.

(3) **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 137-047-0710.

Stat. Auth.: ORS 279A.065 & ORS 279B.075

Stats. Implemented: ORS 279B.075

137-047-0280

Emergency Procurements

A Contracting Agency may Award a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. For an Emergency Procurement of construction services that are not public improvements, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances, in conformance with ORS 279B.080(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080

137-047-0285

Special Procurements

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

(2) **Public Notice.** A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract, unless a different time period is stated in the request for approval notice. Award may be made at the time of approval, contingent upon expiration of the protest period or issuance of a written disposition of any protest received.

(3) **Protest.** An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and Rule 137-047-0700.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.085

137-047-0290

Cooperative Procurements

A Contracting Agency may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and Rules 137-046-0400 through 137-046-0480.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.205

PROCUREMENT PROCESS

137-047-0300

Public Notice of Solicitation Documents

(1) **Notice of Solicitation Documents; Fee.** A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

- (a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements; or
- (b) Placing notice on the Contracting Agency's Electronic Procurement System; or
- (c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) **Advertising.** A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

- (a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or
- (b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b).

(3) **Content of Advertisement.** All advertisements for Offers shall set forth:

- (a) Where, when, how, and for how long the Solicitation Document may be obtained;
- (b) A general description of the Goods or Services to be acquired;
- (c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;
- (d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;
- (e) The office where Contract terms, conditions and Specifications may be reviewed;
- (f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;
- (g) The scheduled Opening; and
- (h) Any other information the Contracting Agency deems appropriate.

(4) **Posting Advertisement for Offers.** The Contracting Agency may post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) **Fees.** The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) **Notice of Addenda.** The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with Rule 137-047-0430.

Stat. Auth.: ORS 279A.065, ORS 279B.055 & ORS 279B.060
Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0310

Bids or Proposals are Offers

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or in the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) **Contingent Offers.** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Rule 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) **Offeror's Acknowledgment.** By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-047-0262, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60

137-047-0320

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record, and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";

(e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:

(A) Telephone number; and

(B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents;

(B) Availability or condition of the receiving facsimile machine;

(C) Incompatibility between the sending and receiving facsimile machine;

(D) Delay in transmission or receipt of documents;

(E) Failure of the Offeror to properly identify the Offer documents;

(F) Illegibility of Offer documents; and

(G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0330

Electronic Procurement

(1) Electronic Procurement Authorized.

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) **Rules Governing Electronic Procurements.** The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) **Preliminary Matters.** As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) **Offer Process.** A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with subsection 5(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) Receipt of Electronic Offers.

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) **Failure of the E-Procurement System.** In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in accordance with Rule 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279A.065

BID AND PROPOSAL PREPARATION

137-047-0400

Offer Preparation

(1) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required by the Solicitation Document.

(4) **Electronic Submissions.** If the Solicitation Document permitted Electronic Offers under Rule 137-047-0330, an Offeror may submit its Offer electronically. The Contracting Agency shall not consider Electronic Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0410

Offer Submission

(1) **Product Samples and Descriptive Literature.** A Contracting Agency may require product samples or descriptive literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of product samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) **Identification of Offers.**

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) **Receipt of Offers.** The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0420

Pre-Offer Conferences

- (1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.
- (2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.
- (3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rules 137-047-0255(2) or 137-047-0260(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0430

Addenda to Solicitation Document

- (1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.
- (2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with Rule 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with Rules 137-047-0261 through 137-047-0263. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."
- (3) **Timelines; Extensions.**
 - (a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
 - (b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and Rules 137-047-0261 through 137-047-0263 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.
- (4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with Rule 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for

Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

Stat. Auth.: ORS 279A.065 & ORS 279B.060
Stats. Implemented: ORS 279B.060

137-047-0440

Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rules 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. The Offeror shall mark the submitted modification as follows:

- (a) Bid (or Proposal) Modification; and
- (b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) **Withdrawals.**

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Contracting Agency.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

- (A) Bid (or Proposal) Withdrawal; and
- (B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation.** The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055

137-047-0450

Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055

137-047-0460

Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-047-0470 or 137-047-0262.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055

137-047-0470

Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0480

Time for Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0490

Extension of Time for Acceptance of Offer

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

QUALIFICATIONS AND DUTIES

137-047-0500

Responsibility of Bidders and Proposers

Before Awarding a Contract the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and Rule 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.110

137-047-0525

Qualified Products Lists

A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

137-047-0550

Prequalification of Prospective Offerors

(1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.
(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.120

137-047-0575

Debarment of Prospective Offerors

(1) **Generally.** A Contracting Agency may Debar prospective Offerors for the reasons set for the in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.
(2) **Responsibility.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.
(3) **Imputed Knowledge.** A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
(4) **Limited Participation.** A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation

is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.130

OFFER EVALUATION AND AWARD

137-047-0600

Offer Evaluation and Award

(1) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and Rule 137-046-0310 for Nonresident Bidders.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) Award When Bids are Identical. If the Contracting Agency determines that one or more Bids are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(b) Evaluation of Proposals.

(A) Award When Proposals are Identical. If the Contracting Agency determines that one or more Proposals are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(B) Public Printing. The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) Recycled Materials. When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and Rule 137-046-0320.

(2) **Clarification of Bids or Proposals.** After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All Offers, in the Contracting Agency's sole discretion, needing clarification shall be accorded such an opportunity. The Contracting Agency shall document clarification of any Offer in the Procurement file.

(3) **Negotiations.**

(a) Bids. Except as permitted by section 2 of this rule, a Contracting Agency shall not negotiate with any Bidder. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and Rule 137-047-0262. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(4) **Award.**

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards - Bids.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & ORS 279B.060

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0610

Notice of Intent to Award

(1) **Notice of Intent to Award.** The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances require prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period in the Solicitation documents. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.

(2) **Finality.** The Contracting Agency's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to Rule 137-047-0740; or

(b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

(3) If so provided in the Solicitation documents, said notice of intent to Award may be issued via facsimile or electronic data exchange.

Stat. Auth.: ORS 279A.065 & ORS 279B.135

Stats. Implemented: ORS 279B.135

137-047-0620

Documentation of Award

(1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.

(2) **Contents of Award Record.** The Contracting Agency's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and Rules 137-047-0261 through 137-047-0263, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0630

Availability of Award Decisions

(1) **Contract Documents.** To the extent required by the Solicitation Document, the Contracting Agency shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) **Availability of Award Decisions.** A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Contracting Agency a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

(3) **Availability of Procurement Files.** After notice of intent to Award, the Contracting Agency shall make Procurement files available in accordance with applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0640

Rejection of an Offer

(1) **Rejection of an Offer.**

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to Rule 137-046-0210(4) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities; and

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting

Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency;

(v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state. Such certification demonstrates Offeror's compliance with such law in a credible and convenient way; and

(vi) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) **Form of Business Entity.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

(3) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-047-1610.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100, ORS 279B.110 & ORS 279B.130

137-047-0650

Rejection of All Offers

(1) **Rejection.** A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) **Criteria.** The Contracting Agency may reject all Offers based upon the following criteria:

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the Procurement or solicitation in accordance with Rule 137-047-0660;

or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

137-047-0660

Cancellation of Procurement or Solicitation

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) **Notice of Cancellation Before Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same

manner that the Contracting Agency initially provided notice of the solicitation. Such notice of cancellation shall:

- (a) Identify the Solicitation Document;
 - (b) Briefly explain the reason for cancellation; and
 - (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.
- (3) **Notice of Cancellation After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100

137-047-0670

Disposition of Offers if Procurement or Solicitation Canceled

- (1) **Prior to Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.
- (2) **After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:
- (a) May return Proposals in accordance with ORS 279B.060(6)(c); and.
 - (b) Shall keep Bids in the Procurement file.
- (3) **Rejection of All Offers.** If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100

LEGAL REMEDIES

137-047-0700

Protests and Judicial Review of Special Procurements

- (1) **Purpose.** An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.
- (2) **Delivery.** Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.
- (3) **Content of Protest.** The Written protest must include:
- (a) A detailed statement of the legal and factual grounds for the protest;
 - (b) A description of the resulting harm to the Affected Person; and
 - (c) The relief requested.
- (4) **Contract Review Authority Response.** The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.
- (5) **Judicial Review.** An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & ORS 279B.400
Stats. Implemented: ORS 279B.400

137-047-0710

Protests and Judicial Review of Sole-Source Procurements

(1) **Purpose.** For sole-source Procurements requiring public notice under Rule 137-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) **Content of Protest.** The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) **Contract Review Authority Response.** The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.

(5) **Judicial Review.** Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.075

137-047-0720

Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

(1) **Purpose.** An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) **Basis for Protest.** An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the Contracting Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) **Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) **Content of Protest.** The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) **Contracting Agency Response.** The Contracting Agency shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under Rule 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under Rule 137-047-0660.

(6) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0730

Protests and Judicial Review of Solicitations

(1) **Purpose.**

(a) A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(b) **Specific Special Procurements.** Notwithstanding section 1(a) of this rule, a Person may not protest, challenge, or review approval of a Special Procurement except in conformance with ORS 279B.400.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.

(3) **Content of Protest.** In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under Rule 137-047-0430 or cancel the Procurement or solicitation under Rule 137-047-0660.

(5) **Extension of Closing.** If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider and respond to the protest.

(6) **Clarification.** Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(7) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & ORS 279B.405

Stats. Implemented: ORS 279B.405

137-047-0740

Protests and Judicial Review of Contract Award

(1) **Purpose.** An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first.

(3) **Content of Protest.** An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).

(4) **Contracting Agency Response.** The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & ORS 279B.410

Stats. Implemented: ORS 279B.410 & ORS 279B.415.

137-047-0745

Protests and Judicial Review of Qualified Products List Decisions

(1) **Purpose.** A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's Goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) **Delivery.** Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) **Content of Protest.** The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

(5) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

137-047-0750

Judicial Review of Other Violations

Any violation of ORS chapter 279A or 279B by a Contracting Agency for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.420

137-047-0760

Review of Prequalification and Debarment Decisions

Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.425

137-047-0800

Amendments to Contracts and Price Agreements

(1) **Generally.** A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

(a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.;

(b) These Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.

(c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

(d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:

(A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

(B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract; and

(C) The renegotiated Contract will not increase or extend the total term of the original contract by more than one (1) year. Also, if multiple contracts with a single Contractor are restated as a single Contract, the term

of the single Contract may not have a total term greater than one (1) year longer than the longest term of any of the prior Contracts.

(e) If the Contract is the result of a Cooperative Procurement, the amended Contract may not materially change the terms, conditions, and prices of the Original Contract.

(2) **Small or Intermediate Contract.** A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to sections 1 or 2 of this rule, provided also that the total increase in Contract price does not exceed the amount set forth in Rule 137-047-0265 for small Procurements and Rule 137-047-0270 for intermediate Procurements.

(3) **Emergency Contract.** A Contracting Agency may amend a Contract Awarded as an emergency Procurement if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.

(4) **Price Agreements.** A Contracting Agency may amend or terminate a Price Agreement as follows:

- (a) As permitted by the Price Agreement;
- (b) As permitted by this rule;
- (c) If the circumstances set forth in ORS 279B.140(2) exist; or
- (d) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0810

Termination of Price Agreements

(1) A Contracting Agency may terminate a Price Agreement as follows:

- (a) As permitted by the Price Agreement.
- (b) If the circumstances set forth in ORS 279B.140(2) exist; or
- (c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279B.140

PUBLIC CONTRACTING RULES 2016

DIVISION 48

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIST, TRANSPORTATION PLANNING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

137-048-0100

Application

These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services under Contracts, and set forth the following procedures:

- (a) Procedures through which Contracting Agency selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
- (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by a Local Government.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0110

Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and Rule 137-046-0110, the following definitions apply to these division 48 rules:

- (1) "**Consultant**" means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.
- (2) "**Estimated Fee**" means Contracting Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.
- (3) "**Price Agreement**," for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include price or Consultant compensation information, with:
 - (a) No guarantee of a minimum or maximum purchase; or
 - (b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.
- (4) "**Project**" means all components of a Contracting Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- (5) "**Transportation Planning Services**" are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- (6) "**Related Services**" means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services,

material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0120

[Reserved.]

137-048-0130

Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agency shall follow the applicable selection procedure under either Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). For projects utilizing Informal or Formal Selection Procedures, Contracting Agency may solicit or use pricing policies and pricing proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation only after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure.

(2) When selecting Consultants to perform Related Services Contracting Agency shall follow either its Division 47 or Division 48 rules, as determined in its sole discretion.

(3) A Contracting Agency is not required to follow the procedures in Section (1) or Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of Rule 137-048-0270 (Price Agreements).

(4) Contracting Agency may use electronic methods to screen and select a Consultant in accordance with the procedures described in Rule 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and Section (1) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and Section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and Divisions 46, 47 and 49 of these Rules that match the predominant purpose of the Contract.

(6) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals submitted under these Division 48 Rules.

(b) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agency may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agency may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant.

(c) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(7) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agency may not:

(a) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services; or

(b) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services.

(8) The requirements of ORS 279C.307 and Section (7) of this rule apply in the following circumstances, except as provided in Section (9) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (8)(a) of this rule.

(9) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in Rule 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.100-279C.125

SELECTION PROCEDURES

137-048-0200

Direct Appointment Procedure

(1) Contracting Agency may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Contracting Agency finds that an Emergency exists; or

(b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or

(c) The following requirements are met:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Contracting Agency used either the formal selection procedure under Rule 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract.

(d) Continuation of Project With Extensive Estimated Fee. Where a Project is being continued under subsection 1(c) of this rule, and the Estimated Fee is expected to exceed \$250,000, the Contracting Agency must make written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(A) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and,

(B) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) Contracting Agency may select a Consultant for a Contract under this rule from any and all Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C110 & ORS 279C.115

137-048-0210

Informal Selection Procedure

(1) Contracting Agency may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.

(2) If using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and/or qualifications, Contracting Agency shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

- (iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;
 - (v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;
 - (vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;
 - (vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
 - (viii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.
- (F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and
- (H) A sample form of the Contract.
- (b) Provide a Request for Proposals to a minimum of three (3) prospective Consultants drawn from any and all Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing. If three (3) prospective Consultants cannot reasonably be located, Contracting Agency shall document its efforts in writing and provide the RFP to those Consultants that were located.
- (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals.
- (3) If Contracting Agency does not cancel the RFP after it reviews and ranks each Proposer, Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (a) The Consultant's performance obligations and performance schedule;
 - (b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
 - (c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (4) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with Section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the Proposers do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under Rule 137-048-0220 (Formal Selection Procedure).
- (5) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under Rule 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110

137-048-0220

Formal Selection Procedure

- (1) Contracting Agency shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agency's discretion.
- (2) When using the formal selection procedure Contracting Agency shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.
- (a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as desired by Contracting Agency to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in Rule 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(3) Request for Qualifications Procedure. Contracting Agency may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking Consultants;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;

(J) Consultants' ability to assist Contracting Agency in complying with the solar energy technology requirements of ORS 279C.527; and

(K) Any other information Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(d) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.

(e) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agency shall use the procedure described in this Section (4) of this rule when issuing an RFP for a Contract described in Section (1) of this rule.

(a) RFP Required Contents. Contracting Agency using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in subsection (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in subsection (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance;

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(xiii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and

(xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

- (E) The date and time Proposals are due, and the delivery location for Proposals;
- (F) Reservation of the right to seek clarifications of each Proposal;
- (G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;
- (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;
- (I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;
- (K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
- (L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
- (M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and
- (N) A sample form of the Contract.

(b) RFP Evaluation Committee. The Contracting Agency shall either establish a committee or designate an individual to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agency with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of an evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. If formed, the Contracting Agency shall designate a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;

(c) If the Contracting Agency does not cancel the RFP after completing the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) The Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(d) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with subsection (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110 & ORS 279C.527

137-048-0230

Ties Among Proposers

(1) If Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric

Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this Section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under Rules 137-048-0210(3) or 137-048-0220(4)(c), as applicable.

(2) If Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in Rule 137-046-0300 (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.105 & ORS 279C.110

137-048-0240

Protest Procedures

(1) **RFP Protest and Request for Change.** Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection.**

(a) Single Award. In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of the selection notice that the Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests.** A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & 279C.110

137-048-0250

Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (Rule 137-048-0200), the Informal Selection Procedure (Rule 137-048-0210), or the Formal Selection Procedure (Rule 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting

Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents. In the event of any such cancellation, Contracting Agency shall return Proposals to Proposers and keep a list of returned Proposals in the Solicitation file, in accordance with ORS 279C.107.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279C.110

137-048-0260

Two-Tiered Selection Procedure when State Agency is Lead Contracting Agency

(1) If the Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) **Tier One.** The State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP pursuant to its own rules or, if permitted by state, by these Division 48 rules applicable selection procedures described in from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors, and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) **Tier Two.** In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services

under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110 & ORS 279C.125

137-048-0270

Price Agreements

(1) Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with Rule 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agency may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) Solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion; provided, however, in circumstances where a direct contract is not permitted under Rule 137-048-0200, the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates and overhead. In accordance with Rule 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of Rule 137-048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) A clearly defined statement of work and performance schedule for any deliverables;

(b) A maximum, not-to-exceed price or fixed price amount for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services specified and authorized under the work order or task order; and

(c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065, ORS 279C.110 & ORS 279C.120

POST-SELECTION CONSIDERATIONS

137-048-0300

Prohibited Payment Methodology; Purchase Restrictions

- (1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:
- (a) Consultant's costs under the Contract plus a percentage of those costs; or
 - (b) A percentage of the Project construction costs or total Project costs.
- (2) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract in which:
- (a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
 - (b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.
- (3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:
- (a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see Rules 137-049-0670 and 137-049-0680); or
 - (b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0310

Expired or Terminated Contracts; Reinstatement

- (1) If Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:
- (a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or
 - (b) Terminated Contracts. If Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.
- (2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:
- (a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;
 - (b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and
 - (c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

137-048-0320

Contract Amendments

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

PUBLIC CONTRACTING RULES 2016

DIVISION 49

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

137-049-0100

Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Rules).

(3) These division 49 Rules become effective upon adoption, and apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-049-0110

Policies

In addition to the general Code policies set forth in ORS 279A.015, the ORS 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these division 49 rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.300 & ORS 279C.305

137-049-0120

Definitions

(1) "**Conduct Disqualification**" means a Disqualification pursuant to ORS 279C.440.

(2) "**Disqualification**" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with Rule 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) "**Foreign Contractor**" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 137-049-0480.

(4) "**Notice**" means any of the alternative forms of public announcement of Procurements, as described in Rule 137-049-0210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.110

137-049-0130

Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required by these Rules, or pursuant to ORS 279C.335 on Competitive Bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see Rules 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0140

Contracts for Construction Other than Public Improvements

(1) **Procurement Under ORS Chapter 279B.** Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(6) and Rule 137-049-0150, may be procured and amended as general trade services under the provisions of ORS Chapter 279B and division 47 Rules, rather than under the provisions of ORS Chapter 279C and these division 49 rules.

(2) **Application of ORS Chapter 279C.** Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.320

137-049-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) **Emergency Declaration.** A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall thereafter be kept on file as a public record.

(2) **Competition for Contracts.** Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Emergency Contract Modification.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See Rule 137-049-0815 and BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080, ORS 279C.320 & ORS 279C.380

137-049-0160

Intermediate Procurements; Competitive Quotes and Amendments

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to exceed \$5,000 and not to exceed \$100,000 may be Awarded in accordance with this rule.

(2) **Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes.** Contracting Agencies shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required.** Contracting Agencies shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a written record of the effort made to obtain those quotes.

(5) **Award.** If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a written record of the basis for Award.

(6) **Price Increases.** Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to Rule 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments.** Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule and Rule 137-049-0910. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.410.

FORMAL PROCUREMENT RULES

137-049-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

(1) **Solicitation Document.** Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information.

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) 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) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See Rule 137-049-0300 regarding facsimile Bids or Proposals and Rule 137-049-0310 regarding electronic Procurement);

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

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 137-049-0360. For timing issues relating to Addenda, see Rule 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a.";

(K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered and in good standing with the Construction Contractors Bd, or is licensed by the State Landscape Contractors Bd, as specified in Rule 137-049-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-049-0440(3));

(N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-049-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 137-049-0360.

(b) Evaluation Process:

(A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b) and may reject for good cause all Offers after finding that doing so is in the public's interest;

(B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of Rule 137-049-0650 and 279C.400 to 279C.410; and

(c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Bd for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS

279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) BOLI Public Works bond (ORS 279C.830(3));

(P) Retainage (ORS 279C.550 to 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);

(S) Notice of claim (ORS 279C.605);

(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and

(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Bd or licensed by the State Landscape Contractors Bd in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.110(4), ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055

137-049-0210

Notice and Advertising Requirements; Posting

(1) Notice and Distribution Fee. A Contracting Agency may furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice may indicate where, when, how and for how long the Solicitation Document may be obtained; generally describe the Public Improvement project or Work; and may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing Notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing Notice on the Contracting Agency's Internet Web site.

(2) Advertising. Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the Contract Review Authority for that Contracting Agency has exempted the Solicitation from the advertisement requirement as part of a competitive Bidding exemption under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines that Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Contracting Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276(a)).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360 & ORS 200.035

137-049-0220

Prequalification of Offerors

(1) **Prequalification.** Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) **Mandatory Prequalification.** A Contracting Agency may require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. The Contracting Agency shall determine prequalification status in accordance with 279C.430. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification and establish the time for submitting the prequalification application. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) **Permissive Prequalification.** A Contracting Agency may prequalify a Person for the Contracting Agency's Solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a Solicitation to that list.

(2) **Prequalification Presumed.** If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) **Standards for Prequalification.** A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency.

(See, Rule 137-049-0390(2) regarding standards of responsibility.)

(4) **Notice of Denial.** If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.430 & ORS 279C.435

137-049-0230

Eligibility to Bid or Propose; Registration or License

(1) **Construction Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Bd at the time the Offer is made.

(2) **Landscape Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Bd at the time the offer is made.

(3) **Noncomplying Entities.** The Contracting Agency shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 671.530 & ORS 701.055

137-049-0240

Pre-Offer Conferences

(1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.

(2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

- (3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **Contracting Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 137-049-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.370

137-049-0250

Addenda to Solicitation Documents

- (1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda or in the Solicitation Document.
- (2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Rule 137-049-0210(1). The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available (see Rule 137-049-0200(1)(a)(N)). For example, "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's Web site. Addenda may be downloaded off the Contracting Agency's Web site. Offerors should frequently check the Contracting Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."
- (3) **Timelines; Extensions.** The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
- (4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-049-0260, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-049-0260, whichever date is later. The Contracting Agency shall consider only an Offeror's request for change or protest to the Addendum; the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Contracting Agency's receipt of request for change or protests as set forth in Rule 137-049-0260(2) and (3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395 & ORS 279A.065

137-049-0260

Request for Clarification or Change; Solicitation Protests

- (1) **Clarification.** Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.
- (2) **Request for Change.**
- (a) **Delivery.** An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing;
- (b) **Content of Request for Change.**
- (A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.
- (B) An Offeror shall mark its request for change as follows:
- (i) "Contract Provision Request for Change"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) **Protest.**

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

- (i) A detailed statement of the legal and factual grounds for the protest;
- (ii) A description of the resulting prejudice to the Offeror; and
- (iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

- (i) "Contract Provision Protest"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) **Contracting Agency Response.** The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under Rule 137-049-0260 or cancel the Solicitation under Rule 137-049-0270.

(5) **Extension of Closing.** If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345 & ORS 279C.365

137-049-0270

Cancellation of Solicitation Document

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the Solicitation file.

(2) **Notice of Cancellation.** If the Contracting Agency cancels a Solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with Rule 137-049-0210(1). Such notice of cancellation shall:

- (a) Identify the Solicitation;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Disposition of Offers.**

(a) Prior to Offer Opening. If the Contracting Agency cancels a Solicitation prior to Offer Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395

137-049-0280

Offer Submissions

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive Solicitations, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-049-0410. The Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with Proposer. See Rule 137-049-0650 on Requests for Proposals and Rule 137-049-0290 on Bid or Proposal Security.

(2) **Responsive Offer.** A Contracting Agency may Award a Contract only to a Responsible Offeror with a Responsive Offer.

- (3) **Contingent Offers.** Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to Rule 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- (4) **Offeror's Acknowledgement.** By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-049-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.
- (5) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- (6) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- (7) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required under the Solicitation Document.
- (8) **Facsimile or Electronic Submissions.** If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.
- (9) **Product Samples and Descriptive Literature.** A Contracting Agency may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- (10) **Identification of Offers**
- (a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.
- (b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (11) **Receipt of Offers.** The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

137-049-0290

Bid or Proposal Security

- (1) **Security Amount.** If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(4) and ORS 279C.385.
- (2) **Requirement for Bid Security (Optional for Proposals).** Unless a Contracting Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(5). The Contracting Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).
- (3) **Form of Bid or Proposal Security.** A Contracting Agency may accept only the following forms of Bid or Proposal security:
- (a) A surety bond from a surety company authorized to do business in the State of Oregon;
- (b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
- (c) A cashier's check or Offeror's certified check.
- (4) **Return of Security.** A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or

Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.385 & ORS 279C.390

137-049-0300

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency shall not authorize facsimile Offers unless the Contracting Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions to be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a request for quotes) the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine.";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer.";
- (e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:
 - (A) Telephone number; and
 - (B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and
 - (f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
 - (A) Receipt of garbled or incomplete documents;
 - (B) Availability or condition of the receiving facsimile machine;
 - (C) Incompatibility between the sending and receiving facsimile machine;
 - (D) Delay in transmission or receipt of documents;
 - (E) Failure of the Offeror to properly identify the Offer documents;
 - (F) Illegibility of Offer documents; and
 - (G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

137-049-0310

Electronic Procurement

(1) **General.** Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1) and Rule 137-049-0210(2)(b), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures.** In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with Rule 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C

requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation.** Nothing in this rule shall be construed as prohibiting Contracting Agency from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

137-049-0320

Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rule 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation.** The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360(2), ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0330

Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) **Availability.** After Opening, the Contracting Agency shall make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0340

Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. A Contracting Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-049-0350 or 137-049-0390.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0350

Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375 & ORS 279C.395

137-049-0360

First-Tier Subcontractors; Disclosure and Substitution

(1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed \$100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

- (a) Five percent of the total Contract Price, but at least \$15,000; or
- (b) \$350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline and Bid Opening.** For each ITB to which this rule applies, the Contracting Agency shall:

- (a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
- (b) Open Bids publicly immediately after the Bid Closing; and
- (c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) **Bidder Instructions and Disclosure Form.** For the purposes of this rule, a Contracting Agency in its Solicitation shall:

- (a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is estimated by the Contracting Agency to be greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

- (1) The subcontractor's name,
- (2) The category of Work that the subcontractor would be performing, and
- (3) The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see Rule 137-049-0360)."

(4) **Submission.** A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) **Contracting Agency Role.** Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) **Substitution.** Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies

do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.370, ORS 279C.585, ORS 279C.590 & ORS 279C.835

137-049-0370

Disqualification of Persons

(1) **Authority.** A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns in awarding a subcontract under a Contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify.** The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

- (d) Include a statement of the authority and jurisdiction under which the hearing will be held;
 - (e) Include a reference to the particular sections of the statutes and rules involved;
 - (f) State the proposed Disqualification period; and
 - (g) State that the Person may be represented by legal counsel.
- (3) **Hearing.** The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.
- (4) **Notice of Disqualification.** The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
- (a) The effective date and period of Disqualification;
 - (b) The grounds for Disqualification; and
 - (c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.110, ORS 279C.440, ORS 279C.445 & ORS 279C.450

137-049-0380

Bid or Proposal Evaluation Criteria

(1) **General.** A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See Rule 137-049-0390, and Rules for Alternative Contracting Methods at Rules 137-049-0600 to 137-049-0690.

(2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.

(b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See Rule 137-049-0350(2)(b).

(3) **Proposal Evaluation Criteria.** If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive Bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See Rules 137-049-0650, 137-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0390

Offer Evaluation and Award; Determination of Responsibility

(1) **General.** If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract, see ORS 279C.375(3)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120) education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple Contract awards when specified in the ITB.

(2) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under Rule 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is legally qualified to contract with the Contracting Agency;

(e) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the Work specified in the Contract;

(f) Is covered by liability insurance and other insurance in amounts the Contracting Agency requires in the Solicitation Documents;

(g) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128;

(h) Has made the disclosure required under ORS 279C.370; and

(i) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting Agency Determinations.** Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions.**

(a) The Contracting Agency may require an Offeror to submit Product Samples, descriptive literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) **Evaluation of Bids.** The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

- (a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with Rule 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
- (b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
- (c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.
- (7) **Evaluation of Proposals.** See Rule 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0395

Notice of Intent to Award

- (1) **Notice.** At least seven days before the Award of a Public Improvement Contract, unless the Contracting Agency determines that seven days is impractical and documents its reasons therefore in the procurement file, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post, electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under \$5,000), intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).
- (2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.
- (3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:
- (a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
- (b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.
- (4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reason for the determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

137-049-0400

Documentation of Award; Availability of Award Decisions

- (1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Solicitation file.
- (2) **Contents of Award Record for Bids.** The Contracting Agency's record shall include:
- (a) All submitted Bids;
- (b) Completed Bid tabulation sheet; and
- (c) Written justification for any rejection of lower Bids.
- (3) **Contents of Award Record for Proposals.** Where the use of Requests for Proposals is authorized as set forth in Rule 137-049-0650, the Contracting Agency's record shall include:
- (a) All submitted Proposals.
- (b) The completed evaluation of the Proposals;
- (c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
- (d) If the Contracting Agency permitted negotiations in accordance with Rule 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.
- (4) **Contract Document.** The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.
- (5) **Bid Tabulations and Award Summaries.** Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations

of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) **Availability of Solicitation Files.** The Contracting Agency shall make completed Solicitation files available for public review at the Contracting Agency.

(7) **Copies from Solicitation Files.** Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

137-049-0410

Time for Contracting Agency Acceptance; Extension

(1) **Time for Offer Acceptance.** An Offeror's Bid, or Proposal submitted as a Firm Offer (see Rule 137-049-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

(2) **Extension of Acceptance Time.** A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

137-049-0420

Negotiation With Bidders Prohibited

(1) **Bids.** Except as permitted by ORS 279C.340 and Rule 137-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with Rule 137-049-0910.

(2) **Requests for Proposals.** A Contracting Agency may conduct discussions or negotiations with Proposers only in accordance with the requirements of Rule 137-049-0650.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.340 & ORS 279C.375

137-049-0430

Negotiation When Bids Exceed Cost Estimate

(1) **Generally.** In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 137-049-0360 do not apply to negotiations under this rule.

(2) **Definitions.** The following definitions apply to this administrative rule:

(a) **"Cost Estimate"** means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) **"Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Rule 137-049-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) **"Project"** means a Public Improvement.

(d) **"Value Engineering"** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

- (3) **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.
- (4) **Scope of Negotiations.** Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the Bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.
- (5) **Discontinuing Negotiations.** The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.
- (6) **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.
- (7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & ORS 279A.065
Stats. Implemented: ORS 279C.340

137-049-0440

Rejection of Offers

(1) Rejection of an Offer.

- (a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.
- (b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:
- (A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - (B) Takes exception to terms and conditions (including Specifications);
 - (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - (D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;
 - (E) Is late;
 - (F) Is not in substantial compliance with the Solicitation Documents;
 - (G) Is not in substantial compliance with all prescribed public Solicitation procedures.
- (c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:
- (A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;
 - (B) Has been Disqualified;
 - (C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - (D) Is listed as not qualified by the Construction Contractors Bd, if the Contract is for a Public Improvement;
 - (E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
 - (F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
 - (G) Has failed to provide the certification required under section 3 of this rule;
 - (H) Is not Responsible. See Rule 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.
- (2) **Form of Business.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and Rule 137-049-0370.
- (3) **Certification of Non-Discrimination.** The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-047-1610.

(5) **Rejection of all Offers.** A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(6) **Criteria for Rejection of All Offers.** The Contracting Agency may reject all Offers upon a Written finding that:

- (a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
- (b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;
- (e) The Contracting Agency cancels the Solicitation in accordance with Rule 137-049-0270; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.105, ORS 279A.110, ORS 279C.375, ORS 279C.380 & ORS 279C.395,

137-049-0450

Protest of Contractor Selection, Contract Award

(1) **Purpose.** An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Notice of Competitive Range.** Unless otherwise provided in the RFP, under Rule 137-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

- (a) Seven (7) Days after the date of the notice, unless otherwise provided therein; or
- (b) Until the Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award.** The Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided in Rule 137-049-0395.

(4) Right to Protest Award.

(a) To protest an Award, an adversely affected or aggrieved Offeror must submit to the Contracting Agency a Written protest within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

- (A) Because their Offers were nonresponsive; or
- (B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) Right to Protest Competitive Range.

(a) An adversely affected or aggrieved Proposer may submit to the Contracting Agency a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven Days

after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at Rule 137-049-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests.** The head of the Contracting Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision.** If a protest is not settled, the head of the Contracting Agency, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award.** The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380, ORS 279C.385 & ORS 279C.460

137-049-0460

Performance and Payment Security; Waiver

(1) **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the Contracting Agency's Contract Review Authority exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.380(5). Under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see Rule 137-049-0815 and BOLI rules at OAR 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts.** A Contracting Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond.** The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full contract price.

(4) **Time for Submission.** The apparent successful Offeror must promptly furnish the required performance security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380 & ORS 279C.390

137-049-0470

Substitute Contractor

If the Contractor provided a performance bond, the Contracting Agency, in its sole discretion, may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.370, ORS 279C.375, ORS 279C.380 & ORS 279C.390

137-049-0490

Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be

forwarded to the Contracting Agency. The Contracting Agency Awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.120

ALTERNATIVE CONTRACTING METHODS

137-049-0600

Purpose

Rules 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. Alternative Contracting Methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. To the extent any such Alternative Contracting Methods (with the exception of CM/GC) are utilized within the competitive bidding process set forth at ORS 279C.335(1), Rules 137-049-0600 to 137-049-0690 are advisory only and need not be followed.

Stat. Auth.: ORS 279C.335, ORS 279A.065 & ORS 351.086

Stats. Implemented: ORS 279C.335, ORS 279C.337, ORS 279A.065 & ORS 351.086

137-049-0610

Definitions for Alternative Contracting Methods

The following definitions shall apply to these 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) "**Alternative Contracting Methods**" means innovative Procurement techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting *and* CM/GC forms of contracting, which are specifically addressed in these 137-049-0600 to 137-049-0690 rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements are identified under these 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(2) "**Construction Manager/General Contractor (or "CM/GC")**" has the meaning set forth in ORS 279C.332(2).

(3) **“Construction Manager/General Contractor Method (or “CM/GC Method)”** means the Alternative Method which involves a Contracting Agency’s selection of a CM/GC to perform CM/GC Services for a project or projects.

(4) **“Construction Manager/General Contractor Services (or CM/GC Services)”** has the meaning set forth in ORS 279C.332(3).

(5) **“Design-Build”** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(6) **“Guaranteed Maximum Price (or “GMP)”** has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, “Guaranteed Maximum Price” (or “GMP”) means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.332, ORS 279C.335 & ORS 279A.065

137-049-0620

Use of Alternative Contracting Methods

(1) **Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive Bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Contracting Agency rules. Use of Alternative Contracting Methods may be directed by a Contracting Agency’s Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and these 137-049-0600 to 137-049-0690 rules. See Rule 137-049-0630 regarding required Findings and restrictions on class exemptions. Contracting Agency’s Contract Review Authority has duly adopted class exemptions for the use of Requests for Proposals (RFP) and ESPC forms of contracting and authorized Contracting Agency to approve use of these alternative solicitation and contracting methods in accordance with Rules 137-049-0600 to 137-049-0690, as applicable.

(2) **Post-Project Evaluation.** Per ORS 279C.355 the Contracting Agency shall prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive Bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency’s best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Contracting Agency’s Contract Review Authority within 30 Days of the date the Contracting Agency “accepts” the Public Improvement project, as defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. The evaluation shall address:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.355 & ORS 351.086

137-049-0630

Findings, Notice and Hearing

(1) **“Cost Savings” and Other Substantial Benefits Factors.** When Findings are required under ORS 279C.335(2)(b) to exempt a Contract or class of Contracts from the competitive bidding requirements, the “substantial cost savings and other substantial benefits” criterion at 279C.335(2)(b) requires consideration of the type, cost and amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the local contract review board need not consider nor address that factor.

(2) **Required Information.** The statutory definition of “Findings” at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a Contracting

Agency's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and either 279C.335(2)(b) or 279C.335(2)(c).

(3) **Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, Contracting Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c).

(4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed for Alternative Contracting Methods by specifying: (a) the manner in which an RFP process will be utilized; (b) that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method; (c) that competition will be encouraged; and (d) that Award will be made based upon identified selection criteria and an opportunity to protest that Award provided.

(5) **Class Exemptions.** In making the findings supporting a class exemption the Contracting Agency shall clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279.335(3). Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values, method of procurement, or other factors that distinguish the limited and related class of Projects from a Contracting Agency's overall construction program. The Contracting Agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria of ORS 279C.335(2).

(6) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency shall give notice and hold a public hearing as required by ORS 279C.335(4). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's draft Findings.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335 & ORS 279A.065

137-049-0640

General Alternative Bidding Procedures

(1) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS 279C.305.

(2) **Evaluation Factors.**

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include any factors required by ORS 279C.337 and OAR 137-049-0690.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and Rules 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Rule 137-049-0650. Terms that may be negotiated consist of details of Contract

performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065 & ORS 351.086

137-049-0650

Requests for Proposals (RFP)

(1) Generally.

(a) Contracting Agency may utilize the following RFP process for public improvement contracts to allow flexibility in both proposal evaluation and contract negotiation, subject to ORS 279C.400 to 279C.410, Rules 137-049-0200 to 137-049-0480, and 137-049-0640 to 137-049-0660, unless other applicable statutes or rules control a Contracting Agency's use of competitive proposals for public improvement contracts.

(b) Contracting Agency may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation or distribution of a Request for Proposals. ORS 279C.410(9).

(2) **Solicitation Documents.** In addition to the Solicitation Document requirements of Rule 137-049-0200, Public Improvement Contract Requests for Proposals shall include:

(a) Whether Contracting Agency reserves the right to Award to and Contract with more than one Proposer.

(b) All evaluation factors that will be considered by the Contracting Agency when evaluating the proposals, including the relative importance of price and any other evaluation factors. Evaluation factors may include, but are not limited to, such considerations as price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions.

(c) The method of contractor selection, which may include, but is not limited to, Award without negotiation, negotiation with the highest ranked Proposer, competitive negotiations, multiple-tiered competition designed to either identify a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of these methods;

(d) All required contractual terms and conditions. The Request for Proposals also may: (i) identify those contractual terms or conditions that Contracting Agency reserves, in the Request for Proposals, for negotiation with Proposers; (ii) request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals; and (iii) contain or incorporate the form and content of the contract that the Contracting Agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with Proposers.

(3) Evaluation of Proposals.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process outlined in subsections (5)(b) and (6) of this rule do not apply to this limited negotiation.

(b) Discussions; Negotiations. The Contracting Agency shall evaluate Proposals and, if applicable, establish the Competitive Range, before conducting discussions or negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency may establish a negotiation committee which may include members with legal, technical or negotiating expertise.

(c) Cancellation/Rejection. Cancellation of the Solicitation or rejection of proposals shall be in accordance with ORS 279C.395.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the Solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating that a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Notice/Protests. Notice of Competitive Range and Award, and associated protest rights will be as established in Rule 137-049-0450.

(c) After the protest period provided in accordance with Rule 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency *may* commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

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

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

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

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

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

(A) In conducting discussions, the Contracting Agency:

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

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

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

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the Solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. Written notice of intent to Award and associated protest rights are as established in Rule 137-049-0450. After the protest period expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations.

(6) **Negotiations**.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

- (A) Initial determination of the Competitive Range; or
- (B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.
- (b) Conducting Negotiations.
- (A) Scope. The Contracting 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 authorized for negotiation in the Request for Proposals.
- (c) Terminating Negotiations. The Contracting Agency may terminate negotiations with any Proposer at any time, if the Contracting Agency reasonably believes that:
 - (A) The Proposer is not discussing or negotiating in good faith; or
 - (B) 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.
- (d) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has either:
 - (A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or
 - (B) Completed at least one round of negotiations with all Proposers in the Competitive Range.
- (7) **Post Project Evaluation.** For projects over \$100,000, Contracting Agency shall complete a post project evaluation in compliance with ORS 279C.355 and Rule 137-049-0620(3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 to ORS 279C.410

137-049-0660

RFP Pricing Mechanisms

- (1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive Bidding. Alternatively, a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract may be negotiated.
- (2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as life cycle costing.
- (3) A Guaranteed Maximum Price (GMP) *may be* used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.
 - (a) If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.
 - (b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.
- (4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0670

Design-Build Contracts

- (1) **General.** The Design-Build form of contracting, as defined in Rule 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Contracting Agency must be able to reasonably anticipate the following types of benefits:
 - (a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

(b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;

(c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;

(d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or

(e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) **Authority.** Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules. See particularly Rule 137-049-0620 on "Use of Alternative Contracting Methods" and Rule 137-049-0680 pertaining to ESPCs.

(3) **Selection.** Design-Build selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b) and (c).

(4) **QBS Inapplicable.** Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(5) **Licensing.** If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(6) **Performance Security.** ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) **Contract Requirements.** Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:

(a) **Design Services.** The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.

(b) **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.

(c) **Risk Allocation.** The Contract shall clearly identify the extent to which the Contracting Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.

(d) **Warranties.** The Contract shall clearly identify any express warranties made to the Contracting Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.

(e) **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) **Honoraria.** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the Contracting Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

137-049-0680

Energy Savings Performance Contracts (ESPC)

(1) **Generally.** These 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agency to enter into ESPCs outside the competitive bidding requirements of ORS 279C.334. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method

provided for by these 137-049-0600 to 137-049-0690 rules, the Contracting Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any Contracting Agency not subject to all the requirements of ORS 279C.335.

(2) **ESPC Contracting Method.** The ESPC form of contracting, as defined at Rule 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Contracting Agency must be able to reasonably anticipate on or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, M & V services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;

(f) Integrating cost-effective ECMs into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority.** Contracting Agency may utilize the ESPC form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules.

(4) **No Findings Required.** A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding process of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Contracting Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in 137-049-0600 to 137-049-0690 of these rules.

(5) **Selection.** ESPC selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b), (c) and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) **QBS Inapplicable.** Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) **Licensing.** If the ESCO is not an Oregon licensed design professional, the Contracting Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related services" include conventional design services, commissioning services, training services for the Contracting Agency's operations and maintenance staff, and any similar Personal Services provided by the ESCO's Energy Savings Guarantee are not included in these 279C.380(1)(a) "design and related services." Nevertheless, a Contracting Agency may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee, if the Contracting Agency so provides in the RFP.

(9) **Contracting Requirements.** Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) **General ESPC Contracting Practices.** An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Contracting Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) **Design-Build Contracting Requirements in ESPCs.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Rule 137-040-0560(7) above.

(c) **Pricing Alternatives.** The Contracting Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, which a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Contracting Agency, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) **Permitted ESPC Scope of Work.** The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these 137-049-0600 to 137-049-0690 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

137-049-0690

Construction Manager/General Contractor (CM/GC)

Contracting Agency shall use a Construction Manager/General Contractor (CM/GC) form of contracting, as defined in Rule 137-049-0610(3), only in accordance with ORS 279C.337 and OAR 137-049-0690.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.337 & ORS 279C.380(2)

CONTRACT PROVISIONS

137-049-0800

Required Contract Clauses

Contracting Agencies shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 137-049-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.505 to ORS 279C.545 & ORS 279C.800 to 279C.870

137-049-0810

Waiver of Delay Damages Against Public Policy

Contracting Agencies shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from a Contracting Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.315

137-049-0815

BOLI Public Works Bond

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth. ORS 279A.065

Stats. Implemented: ORS 279C.830

137-049-0820

Retainage

(1) **Withholding of Retainage.** Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) **Deposit in interest-bearing accounts.** Upon request of the Contractor, a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Contracting Agency. Earnings on such account shall accrue to the Contractor.

(4) **Alternatives to cash retainage.** In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency

accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

- (i) Bills, certificates, notes or bonds of the United States.
- (ii) Other obligations of the United States or agencies of the United States.
- (iii) Obligations of a corporation wholly owned by the Federal Government.
- (iv) Indebtedness of the Federal National Mortgage Association.
- (v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
- (vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) **Recovery of Costs.** A Contracting Agency may recover from the Contractor all costs incurred in the proper handling of retainage by reduction of the final payment.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & ORS 279C.845

Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420

137-049-0830

Contractor Progress Payments

(1) **Request for progress payments.** Each month the Contractor shall submit to the Contracting Agency its Written request for a progress payment based upon an estimated percentage of Contract completion. At the Contracting Agency's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Contracting Agency will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the Contracting Agency for any cause; and (iv) less the appropriate amount of retainage.

(2) **Progress payments do not mean acceptance of Work.** Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570

137-049-0840

Interest

(1) **Prompt payment policy.** A Contracting Agency shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) **Interest on progress payments.** Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Contracting Agency approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) **Interest on final payment.** Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) **Settlement or judgment interest.** In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570

137-049-0850

Final Inspection

(1) **Notification of Completion; inspection.** The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) **Acknowledgment of acceptance.** When the Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570(8)

137-049-0860

Public Works Contracts

(1) **Generally.** ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) **Required Contract Conditions.** As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.

(f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

(3) **Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):

(A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or,

(C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 – ORS 279C.870

137-049-0870

Specifications; Brand Name Products

(1) **Generally.** The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) **Equivalents.** A Contracting Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345

137-049-0880

Records Maintenance; Right to Audit Records

(1) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Contracting Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit.** A Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit.** The Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030, ORS 279C.375, ORS 279C.380 & ORS 279C.440

137-049-0890

Contracting Agency Payment for Unpaid Labor or Supplies

(1) **Contract incomplete.** If the Contract is still in force, the Contracting Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If a Contracting Agency chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) **Contract completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The Contracting Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.515

137-049-0900

Contract Suspension; Termination Procedures

(1) **Suspension of Work.** In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency.** A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative.** The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

(6) Application of this rule does not apply to suspension of the work or termination of the Contract as a result of Contractor's violation of any provision of law or Contract term.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

137-049-0910

Changes to the Work and Contract Amendments

(1) **Definitions for Rule.** As used in this rule:

(a) "**Amendment**" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) "**Changes to the Work**" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

(2) **Changes Provisions.** Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) **Change Order Authority.** Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments.** Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work reasonably related to the work described in the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with applicable legal requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279C.335 & ORS 279C.400(1)

PUBLIC CONTRACTING RULES - 2016

CLASS EXEMPTIONS

E-1 Purpose and Statutory Authority

These rules establish classes of public contracts which are exempt from the formal competitive solicitation requirements of the Public Contracting Code. These exemptions may be used by Contracting Agency without additional findings of fact except as otherwise set forth herein. These exemptions are in addition to all contracting exemptions as set forth in the Code and Contracting Agency's Public Contracting Rules, Divisions 46, 47, 48, and 49. Additional contracts or classes of contracts may be expressly exempted from competitive solicitation requirements by ordinance or resolution of Contracting Agency pursuant to Contracting Agency Rules and ORS 279B.085 or 279C.335.

E-2 Advertising Contracts

Contracting Agency may purchase advertising without a competitive process, regardless of dollar value and including that intended for the purpose of giving public or legal notice.

E-3 Equipment Repair and Overhaul

Contracting Agency may enter into a public contract for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment, if required for efficient utilization of such equipment.

E-4 Contracts for Price Regulated Items

Contracting Agency may, regardless of dollar value and without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

E-5 Copyrighted Materials

Contracting Agency may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one supplier available within a reasonable purchase area for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new books, periodicals, workbooks, curriculum materials, reference materials, audio and visual media, and non-mass-marketed software.

E-6 Investment Contracts

Contracting Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by Contracting Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or Constitution.

E-7 Requirements Contracts

(1) Contracting Agency may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at particular prices, provided the original contract is let by a competitive procurement process.

- (2) Purchase may also be made at prices established by a requirement contract or other agreement between another public body and a contractor, if the requirement contract was established by a competitive procurement process.
- (3) The term of any requirement contract, including renewals, shall not exceed five years.

E-8 Office Copier Purchases

- (1) Contracting Agency may enter into multiple requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such contracts shall otherwise conform to the requirements of Public Contracting Rule E-7.
- (2) In exercising this exemption, Contracting Agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

E-9 Manufacturer Direct Supplies

Contracting Agency may purchase goods directly from a manufacturer without a competitive solicitation process if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis, and are not requirements contracts.

E-10 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

Contracting Agency is exempt from formal competitive procurement requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if Contracting Agency conducts an intermediate procurement and Contracting Agency awards the Contract to the Offeror offering the least expensive goods, and retains written justification for the purchase made.

E-11 Hazardous Material Removal; Oil Cleanup

Contracting Agency may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, and such DEQ 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 material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-205 to 340-122-360. In exercising its authority under this exemption Contracting 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.

E-12 Insurance, Employee Benefit

Contracting Agency may purchase employee benefit insurance without a competitive solicitation process, regardless of dollar amount.

E-13 Medical and Laboratory Supplies

Contracting Agency is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;
- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

E-14 Concession Agreements

(1) A concession agreement is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned or controlled by Contracting Agency, and under which the concessionaire makes payments to Contracting Agency based, in whole or in part, on the concessionaire's sales revenues. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

(2) Concession agreements are not required to be competitively bid. However, when it is in Contracting Agency's best interests to do so and in Contracting Agency's sole discretion, Contracting Agency may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

USED PERSONAL PROPERTY

E-15 Used Personal Property, Purchase of

(1) Subject to the provisions of this rule, Contracting Agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if it has determined that the purchase will be unlikely to encourage favoritism or substantially diminish competition, and will either result in cost savings to Contracting Agency or the public, or otherwise promote the public interest in a manner that could not be realized by a formal competitive solicitation process.

(2) "Used personal property or equipment" is 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 Contracting Agency purchase. "Used personal property or equipment" generally does not include property or equipment if Contracting Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(3) For purchases of used personal property or equipment, Contracting Agency shall, where feasible, obtain three competitive quotes, unless Contracting Agency has determined and documented that a purchase without obtaining competitive quotes will be unlikely to encourage favoritism or substantially diminish competition and will either result in substantial cost savings to Contracting Agency or the public, or otherwise promote public interest in a manner that could not be realized by a formal competitive solicitation process.

E-16 Surplus Personal Property, Disposition of

(1) Contracting Agency may dispose of surplus personal property by any means determined to be in the best interest of Contracting Agency, including but not limited to: transfer to other departments; donation to other government agencies, or non-profit organizations; negotiated or advertised sale; trade; auction; liquidation through commercially recognized third party liquidator; or destruction.

(2) Prior to surplusing property, Contracting Agency must find that the chosen disposition will substantially promote the public interest in a manner that could not practicably be realized by a competitive solicitation process and either that the disposition will result in a cost savings to Agency or will probably result in a higher net return than if the property were sold by a competitive solicitation process.

(3) All items of personal property having a residual value of more than \$10,000 are subject to prior authorization of the Contract Review Authority.

PERSONAL SERVICES

E-17 Personal Services for Other than Architect, Engineer, Photogrammetrist, Transportation Planner, and Land Surveying Services

(1) Either the following procedures or those set forth in Contracting Agency's Public Contracting Rules, Division 47, will be used to retain the services of independent contractors, other than architects, engineers, land surveyors, or other professionals otherwise exempt from these Rules or the Code.

(2) Nothing in this section shall apply to the employment of regular Contracting Agency employees unless otherwise approved by the Contract Review Authority or its designee, or personal service contract.

(3) Unless otherwise approved by Contracting Agency, personal service contracts shall require the contractor to defend, indemnify, and hold harmless Contracting Agency, its officers, agents and employees from and against any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to indemnification and defense under the Oregon Tort Claims Act.

(4) Unless otherwise approved by Contracting Agency, all personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least Contracting Agency's tort liability limits, naming Contracting Agency as an additional named insured during the life of the contract.

(5) All personal service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. Contracting Agency's Attorney's Office will prepare model contract provisions for use in Contracting Agency personal service contracts.

(6) The following procedure shall be observed in the selection of personal service contractors:

(a) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, Contracting Agency may negotiate a contract for such services with any qualified contractor it selects.

(b) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, Contracting Agency shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.

(c) Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate Contracting Agency employee or by an interview committee.

(d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, Contracting Agency may select the prospective contractor, and shall prepare a personal service contract.

(7) The above provisions regarding selection procedures do not apply to extensions, amendments, modifications or supplements to executed personal service contracts.

(8) Criteria to be considered in the evaluation and selection of a personal service contractor may include, but is not limited to:

(a) Total cost of services to Contracting Agency.

(b) Specialized experience in the type of work to be performed.

(c) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.

(d) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.

(e) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.

(f) Any other factors relevant to the particular contract.

(9) The selection procedures described in this section may be waived by Contracting Agency, in its discretion, where an emergency exists that could not have been reasonably foreseen which requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of these selection procedures.

(10) Contracting Agency or its designee is authorized to sign all personal service contracts, unless otherwise established by Contracting Agency policy.

(11) Nothing contained in this section shall preclude Contracting Agency from complying with provisions of Federal or State law that require Contracting Agency to utilize a different selection or contracting procedure.

E-18 Liability Insurance Contracts

Contracts for insurance where either the annual or aggregate premium exceeds \$10,000 must be let using one of the following procedures:

(1) Agent of Record: Contracting Agency may appoint a licensed insurance agent ("agent of record") to perform insurance services 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 agent of record is given responsibility.

(a) Prior to the selection of an agent of record, Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such a selection. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general

circulation, or posting notice on Contracting Agency's website. Any such notice shall generally describe the nature of the insurance that the Contracting Agency will require.

(b) Any appointment period shall not exceed five years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(c) In selecting an agent of record, Contracting Agency shall select the agent(s) most likely to perform the most cost-effective services.

(2) Specific Proposals for Insurance Contracts: Contracting Agency may solicit proposals from licensed insurance agents or licensed insurers for the purpose of acquiring specific insurance contracts subject to the following conditions:

(a) Contracting Agency shall make reasonable efforts to inform known insurance agents or insurers 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. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website.

(b) Contracting Agency shall select an agent or insurer on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.

HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY OF LANE COUNTY

NOTICE IS HEREBY GIVEN that the Housing Authority and Community Services Agency of Lane County, dba Homes for Good Housing Agency (Agency) will hold a joint public hearing of its Board of Commissioners and its Local Contract Review Board regarding adoption of Public Contracting Rules addressing state and federal procurement requirements on the 27th day of June, 2018, at 2:30 p.m. The meeting will be held at the Board of County Commissioners Conference Room, Public Service Building 125 East 8th Avenue, Eugene, Oregon. The proposed Order opts the Agency out of the Attorney General Model Rules of Public Contracting and adopts alternative public contracting rules and exemptions.

The public hearing will be held for the purpose of taking comments on the Agency's draft findings supporting the exemption of certain classes of special procurements and public improvement contracts from competitive bidding requirements. The draft findings are available for review on the Agency's website.

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Eugene, OR - Wednesday, June 14, 2018

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NOTICE OF PUBLIC HEARING NOTICE in Eugene, OR 97401, US

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Location: Eugene, OR 97401, US
Category: Events and Notices - Legal and Public Notices
Posted: 06/14/2018

Details

NOTICE OF PUBLIC HEARING
 NOTICE IS HEREBY GIVEN that the Housing Authority and Community Services Agency of Lane County, dba Homes for Good Housing Agency (Agency) will hold a joint public hearing of its Board of Commissioners and its Local Contract Review Board regarding adoption of Public Contracting Rules addressing state and federal procurement requirements on the 27th day of June, 2018, at 2:30 p.m. The meeting will be held at the Board of County Commissioners Conference Room, Public Service Building 125 East 8th Avenue, Eugene, Oregon. The proposed Order opts the Agency out of the Attorney General Model Rules of Public Contracting and adopts alternative public contracting rules and exemptions. The public hearing will be held for the purpose of taking comments on the Agency's draft findings supporting the exemption of certain classes of special procurements and public improvement contracts from competitive bidding requirements. The draft findings are available for review on the Agency's website.

No. 7281718 - June 14, 2018

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AGENDA CHECKLIST

AGENDA INFORMATION TO BE SUBMITTED TO THE BOARD OFFICE
 (Aisha McCoy, Administrative Specialist ext 2525)

AGENDA TITLE: In the Matter of Approving the Submission of the Annual Agency Plan for the Fiscal Year beginning October 1, 2018.

One Title Memo

Agenda Packet
 One Original Hard Copy plus
 One copy e-mailed to
amccoy@homesforgood.org

Material Due
 Due by 12 pm Wednesday
 preceding the week it will be
included in the agenda notice

DEPARTMENT	Property Management		
CONTACT	Wesley Lucas	EXT	2565
PRESENTERS	Wesley Lucas & Amy Cook	EXT	2565

AGENDA DATE: **06/27/2018**

THIS ITEM WILL INVOLVE:

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Consent Calendar | <input type="checkbox"/> Report | <input type="checkbox"/> Appointments | <input type="checkbox"/> Committee Reports |
| <input checked="" type="checkbox"/> ORDER/Resolution | <input type="checkbox"/> Discussion & Action | <input type="checkbox"/> Discussion Only | |
| <input type="checkbox"/> Ordinance/Public Hearing | <input type="checkbox"/> Presentation | | |
| Public Comment Anticipated? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Estimated Time <u>10 min</u> | |

NOTE: DEPARTMENT MANAGER MUST SIGN OFF BEFORE SUBMITTING TO BOARD OFFICE

Executive Director/: **Jacob Fox** Date **06/19/2018**

Deputy Director _____

Legal Staff-Review by: _____ Date _____

*if required _____

Management Staff- _____ Date _____

Review by: _____



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300 West Fairview Dr., Springfield, OR 97477 • PH 541-682-4090 • FAX 541-682-3875



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HOMES FOR GOOD M E M O R A N D U M

TO: Homes for Good Board of Commissioners

FROM: Jacob Fox, Executive Director

AGENDA ITEM TITLE: In the Matter of Approving the Submission of the Annual Agency Plan for the Fiscal Year beginning October 1, 2018.

AGENDA DATE: June 27, 2018

I MOTION

It is moved that the order be adopted approving the submission of the Annual Agency Plan for the fiscal year beginning October 1, 2018.

II ISSUE

The Annual Agency Plan requires Board approval and certification that the Agency has complied with the applicable requirements listed on the certification form.

III DISCUSSION

A. Background/Analysis

The Agency is required by Section 511 of the Quality Housing and Work Responsibility Act of 1998 (and ensuing HUD requirements) to submit a 5-Year and Annual Plan to HUD.

This year the Agency is only required to submit an Annual Plan because the 5-Year Plan was submitted in 2014 for FY 2015-2019. As in previous years, the focus of the Plan is to identify the programs and services provided under the Public Housing and Section 8 Tenant Based Assistance Programs and to allow public access and comment on those programs and services. The Work Responsibility Act requires that Housing Authorities work with their Public Housing Resident Advisory Boards (RAB) on the planning and development of the Plan. In order to meet this requirement, the Agency began meeting with the Resident Board earlier this year. The RAB was presented with various components of the Plan at these meetings.

The Act also requires that the Agency's Plan is consistent with the Consolidated Plan (an inter-jurisdictional effort designed to address the needs of the community). The Agency's Plan coordinates and addresses many of the needs outlined in the Consolidated Plan, such as, increasing affordable rental housing, conserving and improving existing affordable housing, and increasing homeownership opportunities.

HUD requires that Housing Authorities provide public notice of a 45-day comment period and a Public Hearing on the proposed plan. The Agency has met this requirement through public advertisement, resident meetings, and a Public Hearing. Throughout the comment period, the Plan and essential supporting documents have been available for public viewing on the website, at both Agency administration buildings, and at each Public Housing development site. A Public Hearing was held at the beginning of the Homes for Good Board of Commissioners meeting on May 23, 2018. No comments about the proposed plan were received during the comment period or at the Public Hearing.

The Agency is required to submit the Plan electronically to HUD no later than July 17, 2018. Along with the electronic submission, the Agency is required to submit to HUD the Board Certification in a HUD prescribed format.

B. Recommendation

In order to receive subsequent HUD funding, the Agency Annual Plan and the related certification must be submitted to HUD. Approval of the proposed motion is recommended.

IV IMPLEMENTATION/FOLLOW-UP

A copy of the PHA Certifications of Compliance with PHA Plans and Related Regulations form must be filled out and signed by the Chair.

Upon approval by the Board, the Executive Director will direct staff to submit the Annual Plan to HUD.

V ATTACHMENTS

1. A copy of the 2018-2019 Annual Agency Plan is attached.
2. A copy of the Public Comment Advertisement is attached.
3. A blank copy of the Certification of Compliance with PHA Plans and Related Regulations is attached.
4. A copy of the Certification by State or Local Official of PHA Plans Consistency with the Consolidated Plan, signed by the Eugene city manager, is attached.

IN THE BOARD OF COMMISSIONERS OF THE
HOMES FOR GOOD HOUSING AGENCY, OF LANE COUNTY OREGON

ORDER 18-27-06-02H

In the Matter of Approving the Submission of
the Annual Agency Plan for the Fiscal Year
beginning October 1, 2018.

WHEREAS, Homes for Good Housing Agency is required by Section 511 of the Quality Housing and Work Responsibility Act of 1998 (and ensuing HUD requirements) to submit a 5-Year and Annual Plan to HUD.

WHEREAS, Homes for Good Housing Agency is only required to submit an Annual Plan, because the 5-Year Plan was submitted in 2014 for FY 2015-2019.

WHEREAS, HUD requires that Homes for Good work with the Resident Advisory Board (RAB) on the development of the Annual Plan.

WHEREAS, Homes for Good Housing Agency has worked with the RAB each month since January to ensure adequate involvement.

WHEREAS, HUD requires that housing authorities provide public notice of a 45-day comment period and a public hearing on the proposed plan.

WHEREAS, Homes for Good Housing Agency has met this requirement through public advertisement of the comment period, and a public hearing on May 23, 2018.

WHEREAS, HUD requires that the Plan be consistent with the Consolidated Plan.

WHEREAS, the City Manager of Eugene has submitted a Certification by State of Local Official of PHA Plans Consistency with the Consolidated Plan.

WHEREAS, Homes for Good Housing Agency is required to submit the Plan electronically to HUD no later than July 17, 2018, accompanied by a signed Certification of Compliance with PHA Plans and Related Regulations.

NOW IT IS THEREFORE ORDERED THAT: The Annual Plan for the Fiscal Year beginning October 1, 2018 is approved for submission to HUD, and the Chair will complete and sign the Certification of Consistency with PHA Plans and Related Regulations.

DATED this _____ day of _____, 2018

Chair, Homes for Good Board of Commissioners



ANNUAL PLAN FOR FISCAL YEAR 2019

5 YEAR PLAN FOR FISCAL
YEARS 2015-2019

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5 Year Plan for Fiscal Years 2015-2019 Annual Plan for Fiscal Year 2019

Homes for Good Housing Agency

177 Day Island Road
Eugene, OR 97401

Public Hearing

Wednesday, May 23, 2018
2:30 p.m.

Board of County Commissioners Conference Room
Public Service Building
125 East 8th Avenue
Eugene, OR, 97401

Written Comments

Due June 11, 2018
Contact: Wesley Lucas
wluccas@homesforgood.org
(541) 682-2565

If you are in need of a reasonable accommodation in regard to this meeting or this plan, please contact Wesley Lucas at the phone number or email address above, at least 24 hours prior to the meeting time.

EXECUTIVE SUMMARY

APRIL 27, 2018

The Agency is required by Section 511 of the Quality Housing and Work Responsibility Act of 1998 (and ensuing HUD requirements) to submit a 5-Year and Annual Plan to HUD. This year the Agency is only required to submit an Annual Plan covering FY 2019, which begins October 1st, 2018 and ends September 30th, 2019.

As in previous years, the focus of the Plan is to identify the programs and services provided under the Public Housing (PH) and Section 8 Tenant Based Assistance Programs and to allow public access and comment on those programs and services. The Work Responsibility Act requires that housing authorities work with their Public Housing Resident Advisory Boards (RAB) on the planning and development of the Plan. In order to meet this requirement, the Agency began meeting with the RAB in January 2018.

This booklet contains the following components which are all part of the required submission to HUD.

Section I PHA Annual Plan Update HUD form 50075-HP

Section II Attachments and Appendices supporting HUD form 50075-HP

Supporting Documentation has been updated as needed and the updates have been summarized in the attachments & appendices. The Supporting Documentation, along with this booklet, are available for inspection at both the Day Island and Fairview administration offices, and by contacting the resident commissioners who each have a notebook containing all supporting documents. Supporting Documents include, among other things, the current Section 8 Administrative Plan, Public Housing Admissions and Continued Occupancy Policies (ACOP), flat rent methodology and schedule, Agency Budgets, Public Housing Maintenance Plan, and the Agency Audit.

In January 2018, the Agency changed names from Housing and Community Services Agency of Lane County (HACSA) to Homes for Good Housing Agency (Homes for Good). Due to the production dates of various documents, both names may appear in this plan.

Public Notice –

The publication of this booklet begins the 45 day comment period required by the regulations. During this comment period, on May 23rd 2018, the Agency will hold a public hearing to address questions and comments on the Plan. Following the comment period, the Agency will submit the Plan to the Homes for Good Board of Commissioners for approval, followed by electronic submission to HUD no later than July 18th, 2018.

SECTION I
PHA Annual Plan Update

HUD Form 50075-HP

Streamlined Annual PHA Plan <i>(High Performer PHAs)</i>	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB No. 2577-0226 Expires: 02/29/2016
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Purpose. The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families

Applicability. Form HUD-50075-HP is to be completed annually by **High Performing PHAs**. PHAs that meet the definition of a Standard PHA, Troubled PHA, HCV-Only PHA, Small PHA, or Qualified PHA do not need to submit this form.

Definitions.

- (1) **High-Performer PHA** – A PHA that owns or manages more than 550 combined public housing units and housing choice vouchers, and was designated as a high performer on both of the most recent Public Housing Assessment System (PHAS) and Section Eight Management Assessment Program (SEMAP) assessments.
- (2) **Small PHA** - A PHA that is not designated as PHAS or SEMAP troubled, or at risk of being designated as troubled, and that owns or manages less than 250 public housing units and any number of vouchers where the total combined units exceeds 550.
- (3) **Housing Choice Voucher (HCV) Only PHA** - A PHA that administers more than 550 HCVs, was not designated as troubled in its most recent SEMAP assessment, and does not own or manage public housing.
- (4) **Standard PHA** - A PHA that owns or manages 250 or more public housing units and any number of vouchers where the total combined units exceeds 550, and that was designated as a standard performer in the most recent PHAS or SEMAP assessments.
- (5) **Troubled PHA** - A PHA that achieves an overall PHAS or SEMAP score of less than 60 percent.
- (6) **Qualified PHA** - A PHA with 550 or fewer public housing dwelling units and/or housing choice vouchers combined, and is not PHAS or SEMAP troubled.

A.	PHA Information.																										
A.1	<p> PHA Name: <u>Homes for Good Housing Agency</u> PHA Code: <u>OR006</u> PHA Type: <input type="checkbox"/> Small <input checked="" type="checkbox"/> High Performer PHA Plan for Fiscal Year Beginning: (MM/YYYY): <u>10/2018</u> PHA Inventory (Based on Annual Contributions Contract (ACC) units at time of FY beginning, above) Number of Public Housing (PH) Units: <u>695</u> Number of Housing Choice Vouchers (HCVs): <u>3065</u> Total Combined: <u>3760</u> PHA Plan Submission Type: <input checked="" type="checkbox"/> Annual Submission <input type="checkbox"/> Revised Annual Submission </p> <p> Availability of Information. In addition to the items listed in this form, PHAs must have the elements listed below readily available to the public. A PHA must identify the specific location(s) where the proposed PHA Plan, PHA Plan Elements, and all information relevant to the public hearing and proposed PHA Plan are available for inspection by the public. Additionally, the PHA must provide information on how the public may reasonably obtain additional information of the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions. At a minimum, PHAs must post PHA Plans, including updates, at each Asset Management Project (AMP) and main office or central office of the PHA. PHAs are strongly encouraged to post complete PHA Plans on their official website. PHAs are also encouraged to provide each resident council a copy of their PHA Plans. </p> <p style="text-align: center;"> The Plan and Plan Elements are available at the Day Island Administrative Building, the Fairview Administrative Building (which includes the AMP 200, 300, and 500 offices), Laurelwood Homes (AMP 100), Parkview Terrace (AMP 400), and Village Oaks (which includes the AMP 600 office). The Plan and Plan Elements will be provided to each Resident Advisory Board member, and will be available on the Homes for Good website. Supporting documents are available in the Day Island and Fairview Administrative Buildings, and staff members are available upon request to help explain program documents. </p> <p> <input type="checkbox"/> PHA Consortia: (Check box if submitting a Joint PHA Plan and complete table below) </p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th rowspan="2" style="width: 25%;">Participating PHAs</th> <th rowspan="2" style="width: 10%;">PHA Code</th> <th rowspan="2" style="width: 25%;">Program(s) in the Consortia</th> <th rowspan="2" style="width: 20%;">Program(s) not in the Consortia</th> <th colspan="2" style="width: 20%;">No. of Units in Each Program</th> </tr> <tr> <th style="width: 10%;">PH</th> <th style="width: 10%;">HCV</th> </tr> </thead> <tbody> <tr> <td>Lead PHA:</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program		PH	HCV	Lead PHA:																	
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		PH	HCV																								
Lead PHA:																											

B.	Annual Plan Elements
B.1	<p>Revision of PHA Plan Elements.</p> <p>(a) Have the following PHA Plan elements been revised by the PHA since its last Annual PHA Plan submission?</p> <p>Y N</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/> Statement of Housing Needs and Strategy for Addressing Housing Needs. <input checked="" type="checkbox"/> <input type="checkbox"/> Deconcentration and Other Policies that Govern Eligibility, Selection, and Admissions. <input checked="" type="checkbox"/> <input type="checkbox"/> Financial Resources. <input checked="" type="checkbox"/> <input type="checkbox"/> Rent Determination. <input checked="" type="checkbox"/> <input type="checkbox"/> Homeownership Programs. <input checked="" type="checkbox"/> <input type="checkbox"/> Safety and Crime Prevention. <input checked="" type="checkbox"/> <input type="checkbox"/> Pet Policy. <input type="checkbox"/> <input checked="" type="checkbox"/> Substantial Deviation. <input type="checkbox"/> <input checked="" type="checkbox"/> Significant Amendment/Modification</p> <p>(b) The PHA must submit its Deconcentration Policy for Field Office Review.</p> <p style="text-align: center;">Please see Attachment 1: Deconcentration Policy</p> <p>(c) If the PHA answered yes for any element, describe the revisions for each element below:</p> <p style="text-align: center;">Please see Attachment 2: Revision of PHA Plan Elements</p>
B.2	<p>New Activities.</p> <p>(a) Does the PHA intend to undertake any new activities related to the following in the PHA's current Fiscal Year?</p> <p>Y N</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/> Hope VI or Choice Neighborhoods. <input type="checkbox"/> <input checked="" type="checkbox"/> Mixed Finance Modernization or Development. <input checked="" type="checkbox"/> <input type="checkbox"/> Demolition and/or Disposition. <input type="checkbox"/> <input checked="" type="checkbox"/> Conversion of Public Housing to Tenant Based Assistance. <input checked="" type="checkbox"/> <input type="checkbox"/> Conversion of Public Housing to Project-Based Assistance under RAD. <input checked="" type="checkbox"/> <input type="checkbox"/> Project Based Vouchers. <input type="checkbox"/> <input checked="" type="checkbox"/> Units with Approved Vacancies for Modernization. <input checked="" type="checkbox"/> <input type="checkbox"/> Other Capital Grant Programs (i.e., Capital Fund Community Facilities Grants or Emergency Safety and Security Grants).</p> <p>(b) If any of these activities are planned for the current Fiscal Year, describe the activities. For new demolition activities, describe any public housing development or portion thereof, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act under the separate demolition/disposition approval process. If using Project-Based Vouchers (PBVs), provide the projected number of project based units and general locations, and describe how project basing would be consistent with the PHA Plan.</p> <p style="text-align: center;">Please See Attachment 3: PHA Plan New Activities</p>
B.3	<p>Progress Report.</p> <p>Provide a description of the PHA's progress in meeting its Mission and Goals described in the PHA 5-Year Plan.</p> <p style="text-align: center;">Please see Attachment 4: Progress Report</p>
B.4.	<p>Most Recent Fiscal Year Audit.</p> <p>(a) Were there any findings in the most recent FY Audit?</p> <p>Y N</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/></p> <p>(b) If yes, please describe:</p> <p style="text-align: center;">Please see Attachment 5: 2016 FY Audit</p>

Other Document and/or Certification Requirements.	
C.1	<p>Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan</p> <p><u>Form 50077-ST-HCV-HP</u>, <i>Certification of Compliance with PHA Plans and Related Regulations</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
C.2	<p>Civil Rights Certification.</p> <p><u>Form 50077-ST-HCV-HP</u>, <i>Certification of Compliance with PHA Plans and Related Regulations</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
C.3	<p>Resident Advisory Board (RAB) Comments.</p> <p>(a) Did the RAB(s) provide comments to the PHA Plan?</p> <p>Y N <input checked="" type="checkbox"/> <input type="checkbox"/></p> <p>If yes, comments must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations.</p> <p style="text-align: center;">Please See Attachment 6: Resident Advisory Board (RAB) Comments</p>
C.4	<p>Certification by State or Local Officials.</p> <p><u>Form HUD 50077-SL</u>, <i>Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
D Statement of Capital Improvements. Required in all years for all PHAs completing this form that administer public housing and receive funding from the Capital Fund Program (CFP).	
D.1	<p>Capital Improvements. Include a reference here to the most recent HUD-approved 5-Year Action Plan (HUD-50075.2) and the date that it was approved by HUD.</p> <p>See HUD Form 50075.2 approved by HUD on August 9th, 2017</p>

Instructions for Preparation of Form HUD-50075-HP Annual Plan for High Performing PHAs

A. PHA Information. All PHAs must complete this section.

A.1 Include the full **PHA Name**, **PHA Code**, **PHA Type**, **PHA Fiscal Year Beginning** (MM/YYYY), **PHA Inventory**, **Number of Public Housing Units and or Housing Choice Vouchers (HCVs)**, **PHA Plan Submission Type**, and the **Availability of Information**, specific location(s) of all information relevant to the public hearing and proposed PHA Plan. ([24 CFR §903.23\(4\)\(e\)](#))

PHA Consortia: Check box if submitting a Joint PHA Plan and complete the table. ([24 CFR §943.128\(a\)](#))

B. Annual Plan.

B.1 Revision of PHA Plan Elements. PHAs must:

Identify specifically which plan elements listed below that have been revised by the PHA. To specify which elements have been revised, mark the “yes” box. If an element has not been revised, mark “no.”

Statement of Housing Needs and Strategy for Addressing Housing Needs. Provide a statement addressing the housing needs of low-income, very low-income and extremely low-income families and a brief description of the PHA’s strategy for addressing the housing needs of families who reside in the jurisdiction served by the PHA. The statement must identify the housing needs of (i) families with incomes below 30 percent of area median income (extremely low-income), (ii) elderly families and families with disabilities, and (iii) households of various races and ethnic groups residing in the jurisdiction or on the waiting list based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data. The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. For years in which the PHA’s 5-Year PHA Plan is also due, this information must be included only to the extent it pertains to the housing needs of families that are on the PHA’s public housing and Section 8 tenant-based assistance waiting lists. ([24 CFR §903.7\(a\)\(1\)](#)) and 24 CFR §903.12(b). Provide a description of the PHA’s strategy for addressing the housing needs of families in the jurisdiction and on the waiting list in the upcoming year. For years in which the PHA’s 5-Year PHA Plan is also due, this information must be included only to the extent it pertains to the housing needs of families that are on the PHA’s public housing and Section 8 tenant-based assistance waiting lists. ([24 CFR §903.7\(a\)\(2\)\(ii\)](#)) and 24 CFR §903.12(b).

Deconcentration and Other Policies that Govern Eligibility, Selection and Admissions. Describe the PHA’s admissions policy for deconcentration of poverty and income mixing of lower-income families in public housing. The Deconcentration Policy must describe the PHA’s policy for bringing higher income tenants into lower income developments and lower income tenants into higher income developments. The deconcentration requirements apply to general occupancy and family public housing developments. Refer to 24 CFR §903.2(b)(2) for developments not subject to deconcentration of poverty and income mixing requirements. ([24 CFR §903.7\(b\)](#)) Describe the PHA’s procedures for maintaining waiting lists for admission to public housing and address any site-based waiting lists. ([24 CFR §903.7\(b\)](#)) A statement of the PHA’s policies that govern resident or tenant eligibility, selection and admission including admission preferences for both public housing and HCV. ([24 CFR §903.7\(b\)](#)) Describe the unit assignment policies for public housing. ([24 CFR §903.7\(b\)](#))

Financial Resources. A statement of financial resources, including a listing by general categories, of the PHA’s anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned use for the resources. ([24 CFR §903.7\(c\)](#))

Rent Determination. A statement of the policies of the PHA governing rents charged for public housing and HCV dwelling units, including applicable public housing flat rents, minimum rents, voucher family rent contributions, and payment standard policies. ([24 CFR §903.7\(d\)](#))

Homeownership Programs. A description of any homeownership programs (including project number and unit count) administered by the agency or for which the PHA has applied or will apply for approval. For years in which the PHA’s 5-Year PHA Plan is also due, this information must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act. ([24 CFR §903.7\(k\)](#)) and 24 CFR §903.12(b).

Safety and Crime Prevention (VAWA). A description of: **1)** Any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking; **2)** Any activities, services, or programs provided or offered by a PHA that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and **3)** Any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families. ([24 CFR §903.7\(m\)\(5\)](#))

Pet Policy. Describe the PHA’s policies and requirements pertaining to the ownership of pets in public housing. ([24 CFR §903.7\(n\)](#))

Substantial Deviation. PHA must provide its criteria for determining a “substantial deviation” to its 5-Year Plan. ([24 CFR §903.7\(r\)\(2\)\(i\)](#))

Significant Amendment/Modification. PHA must provide its criteria for determining a “Significant Amendment or Modification” to its 5-Year and Annual Plan. Should the PHA fail to define ‘significant amendment/modification’, HUD will consider the following to be ‘significant amendments or modifications’: a) changes to rent or admissions policies or organization of the waiting list; b) additions of non-emergency public housing CFP work items (items not included in the current CFP Annual Statement or CFP 5-Year Action Plan); or c) any change with regard to demolition or disposition, designation, homeownership programs or conversion activities. See guidance on HUD’s website at: [Notice PIH 1999-51](#). ([24 CFR §903.7\(r\)\(2\)\(ii\)](#))

If any boxes are marked “yes”, describe the revision(s) to those element(s) in the space provided.

PHAs must submit a Deconcentration Policy for Field Office review. For additional guidance on what a PHA must do to deconcentrate poverty in its development and comply with fair housing requirements, see [24 CFR 903.2](#). ([24 CFR §903.23\(b\)](#))

B.2 New Activities. If the PHA intends to undertake any new activities related to these elements or discretionary policies in the current Fiscal Year, mark “yes” for those elements, and describe the activities to be undertaken in the space provided. If the PHA does not plan to undertake these activities, mark “no.”

Hope VI. 1) A description of any housing (including project name, number (if known) and unit count) for which the PHA will apply for HOPE VI; and 2) A timetable for the submission of applications or proposals. The application and approval process for Hope VI is a separate process. See guidance on HUD’s website at: <http://www.hud.gov/offices/pih/programs/ph/hope6/index.cfm>. (Notice PIH 2010-30)

Mixed Finance Modernization or Development. 1) A description of any housing (including name, project number (if known) and unit count) for which the PHA will apply for Mixed Finance Modernization or Development; and 2) A timetable for the submission of applications or proposals. The application and approval process for Mixed Finance Modernization or Development is a separate process. See guidance on HUD’s website at: <http://www.hud.gov/offices/pih/programs/ph/hope6/index.cfm>. (Notice PIH 2010-30)

Demolition and/or Disposition. Describe any public housing projects owned by the PHA and subject to ACCs (including name, project number and unit numbers [or addresses]), and the number of affected units along with their sizes and accessibility features) for which the PHA will apply or is currently pending for demolition or disposition; and (2) A timetable for the demolition or disposition. This statement must be submitted to the extent that approved and/or pending demolition and/or disposition has changed. The application and approval process for demolition and/or disposition is a separate process. See guidance on HUD’s website at: http://www.hud.gov/offices/pih/centers/sac/demo_dispo/index.cfm. (24 CFR §903.7(h))

Conversion of Public Housing. Describe any public housing building(s) (including project number and unit count) owned by the PHA that the PHA is required to convert or plans to voluntarily convert to tenant-based assistance; 2) An analysis of the projects or buildings required to be converted; and 3) A statement of the amount of assistance received to be used for rental assistance or other housing assistance in connection with such conversion. See guidance on HUD’s website at: <http://www.hud.gov/offices/pih/centers/sac/conversion.cfm>. (24 CFR §903.7(i))

Project-Based Vouchers. Describe any plans to use HCVs for new project-based vouchers. (24 CFR §983.57(b)(1)) If using project-based vouchers, provide the projected number of project-based units and general locations, and describe how project-basing would be consistent with the PHA Plan.

Other Capital Grant Programs (i.e., Capital Fund Community Facilities Grants or Emergency Safety and Security Grants).

B.3 Progress Report. For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA’s progress in meeting the mission and goals described in the 5-Year PHA Plan. (24 CFR §903.7(r)(1))

B.4 Most Recent Fiscal Year Audit. If the results of the most recent fiscal year audit for the PHA included any findings, mark “yes” and describe those findings in the space provided. (24 CFR §903.7(p))

C. Other Document and/or Certification Requirements

C.1 Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan. Provide a certification that the following plan elements have been revised, provided to the RAB for comment before implementation, approved by the PHA board, and made available for review and inspection by the public. This requirement is satisfied by completing and submitting form HUD-50077 SM-HP.

C.2 Civil Rights Certification. Form HUD-50077 SM-HP, *PHA Certifications of Compliance with the PHA Plans and Related Regulation*, must be submitted by the PHA as an electronic attachment to the PHA Plan. This includes all certifications relating to Civil Rights and related regulations. A PHA will be considered in compliance with the AFFH Certification if: it can document that it examines its programs and proposed programs to identify any impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with the local jurisdiction to implement any of the jurisdiction’s initiatives to affirmatively further fair housing; and assures that the annual plan is consistent with any applicable Consolidated Plan for its jurisdiction. (24 CFR §903.7(o))

C.3 Resident Advisory Board (RAB) comments. If the RAB provided comments to the annual plan, mark “yes,” submit the comments as an attachment to the Plan and describe the analysis of the comments and the PHA’s decision made on these recommendations. (24 CFR §903.13(c), 24 CFR §903.19)

C.4 Certification by State or Local Officials. Form HUD-50077-SL, *Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan*, must be submitted by the PHA as an electronic attachment to the PHA Plan. (24 CFR §903.15)

D. Statement of Capital Improvements. PHAs that receive funding from the Capital Fund Program (CFP) must complete this section. (24 CFR 903.7 (g))

D.1 Capital Improvements. In order to comply with this requirement, the PHA must reference the most recent HUD approved Capital Fund 5 Year Action Plan. PHAs can reference the form by including the following language in Section C. 8.0 of the PHA Plan Template: “See HUD Form 50075.2 approved by HUD on XX/XX/XXXX.”

This information collection is authorized by Section 511 of the Quality Housing and Work Responsibility Act, which added a new section 5A to the U.S. Housing Act of 1937, as amended, which introduced the 5-Year and Annual PHA Plan. The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA’s operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA’s mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families.

Public reporting burden for this information collection is estimated to average 16.64 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and respondents are not required to complete this form, unless it displays a currently valid OMB Control Number.

Privacy Act Notice. The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

SECTION II
PHA Annual Plan Update

Attachments & Appendices Supporting
HUD Form 50075-HP

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ATTACHMENT 1: DECONCENTRATION POLICY

Deconcentration of Poverty and Income-Mixing [24 CFR 903.1 and 903.2]

The PHA's admission policy must be designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. A statement of the PHA's deconcentration policies must be included in its annual plan [24 CFR 903.7(b)].

The PHA's deconcentration policy must comply with its obligation to meet the income targeting requirement [24 CFR 903.2(c)(5)].

Developments subject to the deconcentration requirement are referred to as 'covered developments' and include general occupancy (family) public housing developments. The following developments are not subject to deconcentration and income mixing requirements: developments operated by a PHA with fewer than 100 public housing units; mixed population or developments designated specifically for elderly or disabled families; developments operated by a PHA with only one general occupancy development; developments approved for demolition or for conversion to tenant-based public housing; and developments approved for a mixed-finance plan using HOPE VI or public housing funds [24 CFR 903.2(b)].

Steps for Implementation [24 CFR 903.2(c)(1)]

To implement the statutory requirement to deconcentrate poverty and provide for income mixing in covered developments, the PHA must comply with the following steps:

Step 1. The PHA must determine the average income of all families residing in all the PHA's covered developments. The PHA may use the median income, instead of average income, provided that the PHA includes a written explanation in its annual plan justifying the use of median income.

Homes for Good Policy

Homes for Good will determine the average income of all families in all covered developments on an annual basis.

Step 2. The PHA must determine the average income (or median income, if median income was used in Step 1) of all families residing in each covered development. In determining average income for each development, the PHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.

Homes for Good Policy

Homes for Good will determine the average income of all families residing in each covered development (not adjusting for unit size) on an annual basis.

Step 3. The PHA must then determine whether each of its covered developments falls above, within, or below the established income range (EIR), which is from 85% to 115% of the average family income determined in Step 1. However, the upper limit must never be less than the income at which a family would be defined as an extremely low-income family (federal poverty level or 30 percent of median income, whichever number is higher).

Step 4. The PHA with covered developments having average incomes outside the EIR must then determine whether or not these developments are consistent with its local goals and annual plan.

Step 5. Where the income profile for a covered development is not explained or justified in the annual plan submission, the PHA must include in its admission policy its specific policy to provide for deconcentration of poverty and income mixing.

Depending on local circumstances the PHA's deconcentration policy may include, but is not limited to the following:

- Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities
- Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments
- Establishing a preference for admission of working families in developments below the EIR
- Skipping a family on the waiting list to reach another family in an effort to further the goals of deconcentration
- Providing other strategies permitted by statute and determined by the PHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and PHA strategic objectives

A family has the sole discretion whether to accept an offer of a unit made under the PHA's deconcentration policy. The PHA must not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the PHA's deconcentration policy [24 CFR 903.2(c)(4)].

If, at annual review, the average incomes at all general occupancy developments are within the EIR, the PHA will be considered to be in compliance with the deconcentration requirement and no further action is required.

Homes for Good Policy

For developments outside the EIR Homes for Good will take the following actions to provide for deconcentration of poverty and income mixing:

Existing features and adding incentives and marketing to attract higher income families to lower income developments, to include, but not be limited to:

Family choice annually between income-based and flat rent

Community collaborations

Self-sufficiency programs and partnerships

Rent incentive(s)

ATTACHMENT 2: REVISION OF PHA PLAN ELEMENTS

STATEMENT OF HOUSING NEEDS AND STRATEGY FOR ADDRESSING HOUSING NEEDS

See [Appendix A: Housing Needs & Strategy](#)

DECONCENTRATION AND OTHER POLICIES THAT GOVERN ELIGIBILITY, SELECTION, AND ADMISSIONS

See [Appendix B: Admin Plan Modifications](#)

See [Appendix C: ACOP Modifications](#)

Deconcentration Update for Public Housing:

Homes for Good has analyzed each of the Public Housing developments for concentrations of poverty, based on current records in February 2018. AMP 100 (Laurelwood Homes) and Pengra Court (part of AMP 200) were the only Public Housing complexes where the average resident incomes were below the Homes for Good Established Income Range (EIR) for Public Housing without an explanation that was acceptable to HUD staff.

Homes for Good will take the following actions to deconcentrate poverty:

At Pengra Court (part of AMP 200):

1. Homes for Good will admit only families between the Very Low and Low Income ranges (50%-80% AMI) until we have met our deconcentration goals. This strategy was included in the 2017 Annual Plan.
2. Homes for Good will market the Family Self Sufficiency Program to current residents

At Laurelwood Homes (AMP 100):

1. Homes for Good will market the Family Self Sufficiency Program to current residents

Feb 2018 Public Housing Deconcentration Analysis	Income by Property				# of HHs	0-30% AMI		30-50% AMI		50-80%AMI		80%+ AMI		Explanation; or 2018-2019 Income Mixing Measures
	Average	% EIR	Median	% EIR		#	%	#	%	#	%	#	%	
AMP 200 – McKenzie Village	\$ 15,927	91.5%	\$ 12,358	85.4%	170	111	65.3%	33	19.4%	21	12.4%	5	2.9%	Within EIR
AMP 200 – Pengra Court	\$ 13,929	80.1%	\$ 12,115	83.8%	22	14	63.6%	4	18.2%	4	18.2%	0	0.0%	Measures: 1. Limit admissions to Low Income (50%-80%AMI) households 2. Promote Family Self Sufficiency Program.
AMP 200 – Springfield Scattered Sites	\$ 23,569	135.5%	\$ 20,904	144.5%	15	5	33.3%	4	26.7%	5	33.3%	1	6.7%	Scattered Site: Deconcentrated by design
AMP 300 – Eugene Scattered Sites	\$ 19,407	111.5%	\$ 16,330	112.9%	83	52	62.7%	10	12.0%	20	24.1%	1	1.2%	Within EIR
AMP 300 – Maplewood Meadows	\$ 21,139	121.5%	\$ 20,890	144.4%	37	23	62.2%	3	8.1%	7	18.9%	4	10.8%	A few above-low-income families are skewing the results. % of VLI households is otherwise normal. HUD considers this explanation to be reasonable per email from Dan Esterling on 2/9/2018
AMP 500 – Veneta Scattered Sites	\$ 19,457	111.8%	\$ 17,285	119.5%	20	12	60.0%	4	20.0%	4	20.0%	0	0.0%	Scattered Site: Deconcentrated by design
AMP 100 – Laurelwood Homes	\$ 13,379	76.9%	\$ 12,996	89.9%	28	19	67.9%	7	25.0%	2	7.1%	0	0.0%	Measures: 1. Promote Family Self Sufficiency Program.
Established Income Range (EIR) Upper Bound	\$ 20,008	115.0%	\$ 16,632	115.0%										
Overall Totals	\$ 17,398	100.0%	\$ 14,463	100.0%	375	236	62.9%	65	17.3%	63	16.8%	11	2.9%	
Established Income Range (EIR) Lower Bound	\$ 14,788	85.0%	\$ 12,294	85.0%										

FINANCIAL RESOURCES

PROGRAM	BEGINNING RESERVE	FEDERAL REVENUE	RENT	INTEREST	OTHER	TOTAL
Community Services						
Fleet	\$ 156,200	\$ -	\$ -	\$ -	\$ 62,469	\$ 218,669
Madrone	(4,200)	435,333	-	-	-	431,133
Emergency Housing Assistance	(4,600)	10,000	-	-	-	5,400
Pay for Success	-	-	-	-	51,401	51,401
Weatherization	(203,012)	1,724,082	-	-	-	1,521,070
Development	(1,686,684)	-	-	-	3,934,100	2,247,416
Asset Management	303,900	-	-	-	281,756	585,656
Corporate	412,502	-	-	-	470,950	883,452
ROSS	(216,027)	82,268	-	-	-	(133,759)
Family Self Sufficiency	-	312,632	-	-	-	312,632
Family Shelter House	31,981	-	12,000	-	-	43,981
Herran Center	551,565	-	257,544	-	-	809,109
Signpost House	15,800	-	95,830	-	400	112,030
Shelter Plus Care	(389,910)	478,459	-	-	-	88,549
Housing Plus	(1,250)	-	-	-	3,000	1,750
	(1,033,735)	3,042,774	365,374	-	4,804,076	7,178,489
Housing						
Public Housing & COCC	2,188,707	1,902,694	2,108,041	-	1,675,960	7,875,402
Abbie Lane	354,258	160,000	88,000	-	1,400	603,658
Fourteen Pines	402,665	306,000	169,008	-	6,145	883,818
Village Oaks	(31,484)	109,012	314,200	-	4,400	396,128
Firwood	289,090	-	574,055	-	1,600	864,745
Camas Place	39,752	-	237,926	-	5,208	282,886
Norseman	310,583	-	291,564	-	7,013	609,160
Jacob's Lane	365,151	-	319,573	-	11,316	696,040
Laurel Gardens	217,944	-	203,243	-	5,140	426,327
Capital Fund	-	965,595	-	-	-	965,595
Walnut Park	182,281	-	210,821	-	4,575	397,677
The Orchards	95,237	-	171,264	-	2,000	268,501
Sheldon Village I	353,768	-	253,216	-	6,361	613,345
Sheldon Village II	256,922	-	201,628	-	5,808	464,358
	5,024,874	3,443,301	5,142,539	-	1,736,926	15,347,640
Rental Assistance						
Vouch&MR	2,232,407	18,366,185	-	-	-	18,366,185
	2,232,407	18,366,185	-	-	-	18,366,185
TOTALS	\$ 6,223,546	\$ 24,852,260	\$ 5,507,913	\$ -	\$ 6,541,002	\$ 40,892,314

*BEGINNING RESERVE represents managements estimate of net resources as of the beginning of the fiscal year.

RENT DETERMINATION

See [Appendix C: ACOP Modifications](#)

HOMEOWNERSHIP PROGRAMS

See [Appendix B: Admin Plan Modifications](#)

SAFETY AND CRIME PREVENTION

See [Appendix C: ACOP Modifications](#)

PET POLICY

See [Appendix C: ACOP Modifications](#)

SUBSTANTIAL DEVIATION

No Changes

SIGNIFICANT AMENDMENT/MODIFICATION

No changes

ATTACHMENT 3: PHA PLAN NEW ACTIVITIES

HOPE VI OR CHOICE NEIGHBORHOODS

No New Activities

MIXED FINANCE MODERNIZATION OR DEVELOPMENT

No New Activities

DEMOLITION OR DEPOSITION

Homes for Good is evaluating the remaining public housing portfolio to determine if Demo/Disposition or a RAD conversion is appropriate. If it is determined to be appropriate, Homes for Good may submit a Demo/Dispo application for a portion or the remainder of its public housing portfolio but there is not yet a timeline for when such an application would occur.

CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

No New Activities

CONVERSION OF PUBLIC HOUSING TO PROJECT-BASED ASSISTANCE UNDER RAD

RAD was designed by HUD to assist in addressing the capital needs of public housing by providing access to private sources of capital to repair and preserve its affordable housing assets. Homes for Good submitted applications for participation in the RAD program in November of 2013. Homes for Good plans to convert 112 of its scattered sites to Project Based Vouchers (PBV) and transfer assistance to new sites under the guidelines of PIH Notice 2012-32, REV-2 and any successor notices. Homes for Good received a RAD Portfolio Award for 112 units and a CHAP (Commitment to Enter into Housing Assistance Payments) award for 56 of those units in March of 2015. Homes for Good submitted a revised multi-phase application in May of 2016 which resulted in a new CHAP being issued in August of 2016 that will allow conversion of the units as follows:

AMP 200 Springfield Sites (Partial Conversion): AMP 200 OR000600200 includes 20 scattered site units. A multi-phase application was approved in August 2016 for the initial phase that converts 3 units of public housing, transfers the assistance to Richardson Bridge (an existing Homes for Good development), and disposes of the former PH units for affordable housing purposes. The sale of the scattered sites is in progress. The next phase will transfer the remaining 17 units to a new housing development. Application for the second phase will be made prior to July 1, 2018. The remaining units in AMP 200 will remain unchanged.

AMP 300, Eugene Scattered Sites (Partial Conversion): AMP 300 OR000600300 includes 92 scattered site units. A multi-phase application was approved in August 2016 for the initial phase that converts 9 units of public housing, transfers the assistance to Richardson Bridge (an existing Homes for Good development), and disposes of the former PH units for affordable housing purposes. The sale of the

scattered sites is currently in progress. The next phase will transfer the remaining 83 units to a new development. Application for the second phase will be made prior to July 1, 2018. The remaining units in AMP 300 will remain unchanged.

Homes for Good is evaluating the remaining public housing portfolio to determine if RAD conversion is appropriate. If it is determined to be appropriate, Homes for Good may submit a RAD application for a portion or the remainder of its public housing portfolio.

PROJECT-BASED VOUCHERS

It is Homes for Good's intention to publish Request for Proposal(s) in 2018 in order to award Project Based Vouchers. Homes for Good received notification from the Director of Field Monitoring and Evaluation at HUD in December 2017 approving the issuance of up to 100 Project Based Vouchers for our PHA's jurisdiction. Homes for Good intends to utilize Project Based Vouchers to increase the availability of affordable housing stock in our community along with potentially increasing access to supportive services for families that we serve. In implementing the use of Project Based Vouchers Homes for Good will adhere to the Administrative Plan for; owner proposals, Housing Quality Standards, development and completion of Rehabilitated and Newly Constructed units, Housing Assistance Payment Contracts, selection of Project Based Program participants, occupancy of Project Based units, determining rents to owners and distributing payments to owners.

UNITS WITH APPROVED VACANCIES FOR MODERNIZATION

No New Activities

OTHER CAPITAL GRANT PROGRAMS

Homes for Good applied for the Lead-Based Paint Capital Fund Program. Homes for Good is also evaluating the possibility of applying for Emergency Safety and Security Grants. The agency does not plan to apply for any other Capital Grants.

ATTACHMENT 4: PROGRESS REPORT

GOAL 1 OBJECTIVE: INCREASE THE NUMBER OF AFFORDABLE HOUSING UNITS.

Indicators:

- Build and/or purchase 180 housing units using a mix of local and federal funding.
- Maintain Public Housing vacancies at 3% or less.
- Increase voucher total as private landlords opt-out of their current contracts. Estimated increase is 20 – 50 vouchers.

Update for FY 2019 Annual Plan – Homes for Good is in the process of rehabilitating 32 units, and has applied for funding for an additional 50 units. The Rent Assistance Division expanded housing stock in our jurisdiction by allowing Shared Housing as an option under the Tenant Based Voucher Program. The agency currently has 3065 vouchers in total, including 2817 Tenant Based Vouchers, 236 VASH, and 12 RAD PBV. The overall vacancy rate for Public Housing during FY 2017 was 1.2%.

GOAL 2 OBJECTIVE: CONTINUE TO RECEIVE HIGH PERFORMER STATUS.

Indicators:

- Obligate all Capital Funds within 24 months of grant award.
- Expend all Capital Funds within 48 months of grant award.
- Comply with the financial reporting requirements of Asset Management.
- Comply with the new PHAS requirements (when published) to continue to receive high performer status.
- Submit all PHAS reports within required timelines.
- Meeting Capital Fund, financial reporting, and PHAS reporting requirements.

Update for FY 2019 Annual Plan – Homes for Good Capital Funds are being obligated and expended in compliance with HUD's deadlines. The agency received High Performer status for Public Housing in FY 2017, with a score of 95.

GOAL 3 OBJECTIVE: IMPROVE COMMUNITY QUALITY OF LIFE AND ECONOMIC VITALITY.

Indicators:

- Continue to encourage and promote resident involvement by maintaining the level of resident-elected Tenant Advisory Group (TAG) representation at the majority of Public and Assisted Housing complexes.
- Assist residents in maintaining Resident Newsletters at the majority of Public and Assisted Housing complexes.
- Annually monitor income levels by development to deconcentrate poverty. Bring higher income PH households into lower income developments and vice versa, if necessary.
- Continue giving preference to elderly/disabled applicants at Parkview Terrace, Veneta Villa, Cresview Villa, Riverview Terrace, McKenzie Village (one-bedroom units), Lindeborg Place, and Laurelwood Homes (one-bedroom units).

Update for FY2019 Annual Plan – The Resident Advisory Board (RAB, previously called the TAG) continues to be actively engaged in the annual plan process and has representatives from nine of the Public and Assisted Housing Complexes as well as two representatives from the Section 8 program. All complexes receive either a monthly or quarterly newsletter with resources and information related to their community. Elderly-disabled preferences remain the same as well as deconcentration strategy.

GOAL 4 OBJECTIVE: PROMOTE SELF-SUFFICIENCY AND ASSET DEVELOPMENT OF ASSISTED HOUSEHOLDS.

Indicators:

- Maintain a minimum enrollment of 135 families in the Family Self-Sufficiency (FSS) Program.
- Maintain a minimum representation of 15 community service agencies on the Family Self-Sufficiency Advisory Board.
- Promote the FSS Program within the Section 8 Program by presenting FSS information at a minimum of 50% of the new tenant briefings for new Section 8 participants.
- Continue the promotion of the FSS program through annual mailings of FSS informational brochures to all Section 8 and Public Housing residents.
- Assist a minimum of two FSS participants a year in purchasing a home.
- Assist a minimum of ten FSS participants in opening an Individual Development Account (IDA) for a down payment on a home.

Update for FY2019 Annual Plan – Homes for Good currently has 155 participants enrolled in the FSS program and there are 16 agencies on the FSS Advisory Board. A video about FSS is shown at every Section 8 briefing and brochures are mailed with annual review packets to Section 8 and Public Housing tenants. Four FSS families bought a home last year and we have 24 open IDA accounts.

GOAL 5 OBJECTIVE: TO PROVIDE DECENT, SAFE AND SANITARY HOUSING FOR VERY LOW INCOME FAMILIES WHILE MAINTAINING THEIR RENT PAYMENTS AT AN AFFORDABLE LEVEL.

Indicators:

- Review the payment standard yearly and monitor the private market rents so Section 8 families have a greater opportunity to rent outside of poverty areas and increase the supply of housing choices.
- Allow two person households to rent a zero bedroom unit (studio apartment) which allows greater housing opportunities for those households.
- The Section 8 Supervisor will perform quality control inspections of recently completed Housing Quality Standards (HQS) inspections to maintain, decent, safe, and sanitary housing for at least 34 families per year.
- Coordinate and transition privately subsidized families to the Section 8 Voucher Program.

Update for FY 2019 Annual Plan – In the past year, Homes for Good’s Landlord Liaison provided 4 Housing Quality Standards educational workshops to 42 landlords. Homes for Good’s Landlord Liaison will continue offering Housing Quality Standards educational workshops in FY19.

GOAL 6 OBJECTIVE: TO PROMOTE A HOUSING PROGRAM THAT MAINTAINS QUALITY SERVICE AND INTEGRITY WHILE PROVIDING AN INCENTIVE TO PRIVATE PROPERTY OWNERS TO RENT TO VERY LOW INCOME FAMILIES.

Indicators:

- Maintain a professional working relationship with landlords/owners in our community through education and seminars on the Section 8 program.
- A HACSA staff member serves on the board for the local Rental Owners Association.
- Monitor the payment standards and area rents on the private market to keep Section 8 families' portion of rent affordable and allow the Agency to serve the same number of families as in previous years.

Update for FY 2019 Annual Plan – Homes for Good's Landlord Liaison offered 7 Housing Choice Voucher educational workshops to 70 landlords. Homes for Good's Landlord Liaison will continue offering educational workshops to landlords in FY19.

Homes for Good partnered with Sheltercare's Housing Retention program to provide landlords education and resources to prevent eviction for at-risk tenants. Homes for Good will continue collaborating with the Housing Retention program in FY19.

Homes for Good's Landlord Liaison partnered with Lane County Behavioral Health Division to provide one educational workshop to 45 area supportive service providers specific to Housing Placement and Retention. Homes for Good's Landlord Liaison will continue offering educational opportunities to area supportive service providers through collaboration with Lane County Behavioral Health Division in FY19.

Implemented a no interest loan program for Section 8 deposit money in partnership with Community Lending Works. Beth Ochs continues to serve on the board of the Rental Owner's Association. Various staff members also attend the general monthly membership meeting.

GOAL 7 OBJECTIVE: MAINTAIN SECTION 8 HOMEOWNERSHIP PROGRAM (WITH SUBSIDY ASSISTANCE)

Indicators:

- Provide information to participants from our community partners about the availability of down payment assistance and accessible low interest loans.
- Keep Section 8 participants informed of the program through briefings and informational mailings when program reopens.

Update for the FY 2019 Annual Plan – Homes for Good is serving participants through the Section 8 Homeownership program. Two families bought houses in the past year and we continue to work with interested participants to refer them to NEDCO for homeownership education classes and the Family Self-Sufficiency Program to help them prepare for homeownership. Section 8 Housing Specialists are aware of the program and refer participants when appropriate.

ATTACHMENT 5: 2016 FY AUDIT

FINDING No. 2016-001 – CFDA 14.850 – PUBLIC HOUSING

Criteria or Specific Condition – In the case where a Central Office Cost Center (COCC) chooses to centralize functions that directly support a project (e.g., central maintenance), it must charge each project using a fee-for-service approach, with the exception of charges for rent collections, resident services, security/protective services, waiting lists, and work-order processing (see section 7.10 of the Supplement to Handbook 7475.1). Each project must be charged for the actual services received and only to the extent that such amounts are reasonable. Guidance on fee reasonableness for centralized service fees is provided in Section 7.10 in the Supplement to HUD Handbook 7475.1. HUD considers any fees that are within HUD guidance to be reasonable. Public Housing Agencies (“PHAs”) are requested to consult with HUD regarding any fees that depart from HUD guidance and HUD will provide its view on the reasonableness of the fees. Any fees above the HUD guidelines that have not been approved by HUD need to be reviewed in detail to determine if the additional costs are justified by local conditions or other factors (24 CFR section 990.280(d)).

Condition – HACSA should conform to Financial Report Model No.1 PHAs under Asset Management with COCC as described in HUD Accounting Brief #16 and is required to use a fee-for-service approach for asset management costs incurred by PHAs. During the year ended September 30, 2016, HACSA used a mixed model of a fee-for-service and allocated overhead.

Effect – HACSA was not in compliance with HUD regulations with regards to the allocation of asset management costs for Public Housing for its interim reports.

Cause – In the prior year, HACSA was using only a fee-for-service approach for asset management costs for Public Housing while using allocated overhead for other programs. During the year ended September 30, 2016, HACSA’s overhead allocation computation from COCC to various programs other than Public Housing was revamped to reflect more accurate allocation ratios based on adequate cost drivers for various activities. During this process, it was an oversight to include Public Housing as part of this overhead allocation analysis.

Recommendation – We recommend overhead costs allocation analysis to be closely reviewed by the directors who have thorough understanding of the compliance requirements of the major federal programs.

Response – HACSA removed \$444,119 of overhead allocation charges from COCC to Public Housing as part of the year-end closing process. Going forward, the finance director and deputy director will closely review the analysis of overhead allocations to ensure compliance with HUD requirements for Public Housing. In May of 2017, HACSA engaged Casterline Associates P.C., a HUD expert, to review HACSA’s overhead allocation plan and to provide best practice recommendations.

ATTACHMENT 6: RESIDENT ADVISORY BOARD (RAB)

COMMENTS

Homes for Good staff presented the Annual PHA Plan at various stages of development during the first four Resident Advisory Board (RAB) meetings of 2018. Questions and comments were taken during each meeting. Comments about the proposed changes are listed below, with Homes for Good's response.

January 11th Meeting

Homes for Good staff asked what areas RAB wanted to see changes to policy. RAB wanted to see changes to Inspections. After discussion, Homes for Good staff determined that the issue with inspections was not at the level of policy, but at the level of adherence to procedures.

February 8th Meeting

Staff presented expected changes to the overall PHA Plan Elements, and asked again what areas RAB wanted to see changes to policy. RAB's comments dealt with enforcement of existing policies; primarily the pet and service animal policies.

March 8th Meeting

Staff presented a list of expected changes to ACOP and the Admin Plan and asked for RAB feedback. RAB was supportive of the proposed policy change of returning to doing interim reexaminations when the family's income goes up.

April 12th Meeting

Staff presented a draft of the line-by-line changes to ACOP and the Admin Plan and asked for feedback. RAB had no comments during the meeting, nor did any RAB members submit comments by email or phone prior to April 20th.

Homes for Good will seek additional comments on the final PHA Plan and Elements during the May 10th RAB meeting, and during the public hearing at the Board meeting on May 23rd.

APPENDIX A: HOUSING NEEDS & STRATEGY

The assessment of the impediments to fair housing and fair housing plan strategies, submitted by Homes for Good with its Annual PHA Plan for the Fiscal Year beginning October 1, 2015, was developed with input from the City of Eugene and the City of Springfield Consolidated plan 2015.

As a first step in this effort Homes for Good conducted an assessment of the impediments and barriers to fair housing as part of its Annual PHA Plan for the Fiscal Year beginning October 1, 2015. This was developed with input during the 2015 City of Eugene and the City of Springfield Consolidated planning process and consultation with many community partners. Its effectiveness is reviewed and measured and annually so that strategies can be adjusted as necessary. Through this work it was found that the two primary issues related to housing need are 1) The lack of affordable units and; 2) Significant barriers to providing equal access to units that are available.

Families with incomes below 30 percent of area median income (extremely low-income).

Unless, otherwise noted, all information below is from the 2015 Eugene-Springfield Consolidated Plan. In Eugene-Springfield 44% of households in the plan area have extremely low, very low or low-moderate income. HUD provided numbers in the Consolidated plan indicated that 14.8% of total households were identified as extremely low income (less than 30% AMI) and 12.3% as low income (between 30 and 50% AMI). More households with children under age 6 (55%) and households with people over age 75 (54%) have low-incomes.

The 2015 Eugene-Springfield Consolidated Plan notes that housing costs in the Eugene-Springfield area have risen sharply over the past 25 years while incomes have risen slowly, forcing many households to pay more for housing than is affordable. Households paying more than 30% of household income are considered to have a 'housing cost burden'. A majority of the renters in Eugene (54%) and Springfield (51%) are considered housing cost burdened, while approximately a third of home-owners are also cost burdened (Eugene – 32%, Springfield – 33%). The elderly make up 15% of the very low income with a housing cost burden.

Low and very low-income people need increased access to quality affordable rental housing. There are a total of 31,055 low-income renter households in Eugene, and 7,335 in Springfield.

A significant majority of low-income renters experience a housing cost burden, overcrowding, and/or substandard housing conditions (Eugene – 78%, Springfield – 76%).

A significant majority of low-income renters spend more than 30% of their income on housing costs (Eugene – 76%, Springfield – 74%).

A large percentage of low-income renters spend more than 50% of their income on housing costs (Eugene – 51%, Springfield – 34%).

Elderly families and families with disabilities

Elderly make up 13.9% (Renter) and 33.7% (Owner) of the total households with a severe housing cost burden by income. A severe housing cost burden indicates that over 50% of the income is spent on housing.

The Consolidated Plan also indicates that about 14% of population in the Cities of Eugene and Springfield lives with one or more disabilities (29,125 people). Persons with disabilities face a number of barriers

related to mobility, transportation, housing, employment, and access to services. In addition, persons with disabilities report many instances of discrimination.

Households of various races and ethnic groups residing in the jurisdiction

In most income categories, there are racial or ethnic groups which are experiencing a disproportionately greater need than the needs of the income category as a whole. For people with very low-incomes (30-50% MFI), American Indian/Alaskan Native and Black/African Americans experience a disproportionately greater need than the general population. For people with low-incomes (50-80% MFI), Black/African Americans experience a disproportionate level of need. For people with moderate income (80%-100 MFI), Asian, Latino, and Black/African American experience a disproportionately greater need than the income category as a whole. In Eugene and Springfield, there are approximately 13% of the people who identified as a minority race in the 2010 census. There are five census tracts where a higher percentage (17%-23%) of people identified as a minority race.

Hispanic households experience a disproportionately greater incidence of housing cost burden compared to the entire population, with 53% of the Hispanic households paying more than 30% of their income for housing costs. Asian households experience a disproportionately greater incidence of severe housing cost burdens compared to the entire population; 35% of Asian households spend more than 50% of their income on housing costs.

Black/African American households experience a disproportionately greater need with severe housing problems in both very low-income (30-50% AMI) and moderate income (80-100% AMI) categories. Severe housing problem exist when a household experiences one or more of the following housing problems: lacks complete kitchen facilities, lacks complete plumbing facilities, has over 1.5 people per room, and a housing cost burden over 50%. Both Asian and Hispanic low-income (50-80% AMI) households experience a disproportionate number of severe housing problems.

Affordability and supply - The lack of availability rental and owner occupied units for low-income residents, as indicated by the significant waiting lists for public housing, and the difficulty experienced by Section 8 voucher-holders in trying to find affordable available housing. Additionally, vacancy rates remain low, at 2% for Eugene owner-occupied and rental housing, and 2% in Springfield for owner-occupied housing and 3% for renter units. Data from Oregon Housing and Community Services further supports this need indicating there is a deficit of over 2,700 affordable housing units in Lane County in 2016.

Our strategies to increase the availability of affordable, accessible housing include aggressively pursuing additions to the housing supply through the use of government subsidies and incentives as well as public/private partnerships. During 2016-17 Homes for Good completed construction on 2 multi-family housing complexes. The first, named Bascom Village, is a 101 unit complex which was developed in two phases. Phase I, developed by St. Vincent de Paul, has 51 units and was ready for occupancy in October, 2015. Phase II, completed by Homes for Good in 2016, has 48 units and is 100 percent occupied. In 2017 Homes for Good completed a project called The Oaks at 14th. This project, constructed in partnership with Sponsor's Inc., houses 54 ex-offenders and provides them wrap-around supportive services. Homes for Good is currently rehabbing an existing affordable housing development 32-unit affordable housing development. This will ensure these units are not lost from the inventory of affordable units. At the present time there are over 3 other projects in the development pipeline, which are target an additional 200 units including a Housing First project targeted to the homeless.

Impediments to Fair Housing - While some of the identified impediments are not directly related to the federal Fair Housing Act, as a Public Housing Authority that sponsors the Fair Housing Council of Oregon,

Homes for Good continues to believe that the lack of availability of affordable, accessible housing is a problem in our community and therefore, had maintained its efforts to promote affordable, accessible housing in addition to our efforts to overcome the more specific impediments which are directly related to the federal Fair Housing Act. Three major impediments to providing equal housing to populations were identified in development of the annual plan as follows:

Limited Awareness of Fair Housing Policies in the Broader Community;
Cultural differences and language barriers which inhibit access to fair housing, and;
People with disabilities who have special housing needs have limited choices and are often constrained by their lower incomes.

Impediment: Limited awareness of fair housing policies in the broader community. Strategies to address this impediment include:

Participating in community engagement and is very involved in area- wide Fair Housing planning and efforts.

Joining various relevant boards, including the Rental Owners Association (ROA), Human Rights Commission, Housing Policy Board, United Way Equity Coalition and Poverty Homeless Commission.

Executive Director Jacob Fox is on the Poverty and Homelessness Board, and chairs their facilities committee; in that position Jacob strives to further the goals of Fair Housing.

Rent Assistance Division Director Beth Ochs has joined the board of the Eugene/Springfield Rental Owners Association (ROA). In that role, Beth makes regular presentations to the ROA on topics related to Fair Housing.

Real Estate Development Director, Steve Ochs is on the Housing Policy Board which sets local policy regarding housing and works to further Fair Housing Goals.

Using every opportunity to make regular presentations to Springfield/Eugene groups including Eugene City Club, the University of Oregon, Chambers of Commerce and the Fair Housing Conference.

Collaborating to create a central, county-wide housing waiting list so that when an individual contacts any agency in the County they will have access to all housing opportunities from numerous providers.

Homes for Good continues to support Blacks in Government at their annual celebration and educational event.

Homes for Good mandated a 4 hour all-staff training in Fair Housing laws.

Updated Fair Housing information was added during a recent revision of the Section 8 program briefing packets.

Section 8 Division leadership participates annually in the University of Oregon Internship Fair. This is an opportunity to inform students about Homes for Good's work in the community to promote Fair Housing.

Homes for Good has produced updated maps showing concentrations of poverty in Lane County.

Homes for Good has a presence on the Human Rights Commission and the United Way Equity Coalition.

Impediment: Cultural differences and language barriers which inhibit access to fair housing. Strategies to address this impediment include:

Support of the work of the Inclusion Council (IC), an internal committee charged with scheduling training sessions for employees that focus on cultural differences. All employees are required to attend two per year. For the coming year, the IC has a goal to provide eight training sessions.

Conduct targeted recruitments for bilingual employees. At the present time there are 7 bilingual employees (English/Spanish). Homes for Good also has staff members proficient in German, Polish, Hindi and French.

Homes for Good is a participant in the Centro Latino Americano Health Fair.

Homes for Good, along with staff from Centro Latino Americano, administered a Meyer Memorial Grant aimed at creating educational materials about fair housing and access to low income housing for Spanish speaking community members.

One of the products of the regional Equity and Opportunity Assessment was the creation of a composite map that shows where in the community there are more vulnerable populations living. The composite map combines people with Latino ethnicity, minority, youth, seniors, single headed households, and persons with a disability to see which census tracts have the greatest number of populations that may experience marginalization or disadvantages. Homes for Good uses this map to target outreach.

Impediment: People with disabilities who have special housing needs have limited choices and are often constrained by their lower incomes. Strategies to address this impediment include:

Quarterly meetings at VA to expedite referrals for homeless vets

Administer an Emergency Housing Assistance (EHA) grant which assists VASH voucher holders with miscellaneous costs related to lease-up.

Quarterly meetings with Shelter Plus Case service providers to expedite referrals for S+C Program

Homes for Good and Shelter Plus Care program staff has recalculated rent-reasonableness, making it easier for participants to find affordable units in good neighborhoods.

Provide sufficient ADA units in public housing and LIHTC housing

Working closely with residents to ensure reasonable accommodations are approved when appropriate.

National Alliance on Mental Illness (NAMI) provides resident services at New Winds, an 18-unit LIHTC project in Florence, Oregon

Homes for Good, in partnership with Lane County, is working to expand the Housing First movement for people with disabilities or other barriers to housing.

In addition to these specific strategies Homes for Good has made a strong commitment to promoting Fair Housing rights and Fair Housing choice by providing information regarding Fair Housing and Fair Housing choice to applicants, residents and staff. Following is a list of actions that Homes for Good has taken:

The Fair Housing logo "Equal Housing Opportunity" is prominently displayed on location signs at Homes for Good's two administrative offices and at its various housing complexes

The Fair housing logo is prominently displayed on signs/banners at various Homes for Good locations, announcing the availability of low-income rental units

The Fair Housing logo is on Homes for Good letterhead and business cards

The Agency's Policy of Nondiscrimination on the Basis of Disability/Handicap Status is prominently displayed in the lobbies of the two administrative offices and in public areas at its various housing complexes

The Agency's Policy of Nondiscrimination on the Basis of Disability/Handicap Status is prominently displayed on the website: www.HomesforGood.org

Homes for Good's Public Housing Intake Coordinator, is listed on the Policy of Nondiscrimination on the Basis of Disability/Handicap Status, and in the Statement of Policy, as Homes for Good's 504/ADA Coordinator.

HUD Form 928.1 ("We Do Business in Accordance With the Federal Fair Housing Law" poster) is prominently displayed in English and Spanish in Homes for Good's two administrative offices and in public areas at the various housing complexes

HUD Form 1686-FHEO (*Fair Housing – It's Your Right* Pamphlet) is available in English and Spanish in the two administrative offices

Filing a Housing 'Discrimination Complaint - a pamphlet created by Consumer Action with funding from the U.S Department of Housing and Urban Development (HUD) is available in English and Spanish at Homes for Good's two administrative offices

Applicants or residents with questions about Fair Housing issues are referred, or directed via website link, to the Fair Housing Council of Oregon, Legal Aid Services of Oregon (LSAO) or Lane County Law & Advocacy Center (LCLAC), the Oregon Advocacy Center (OAC), the Lane Independent Living Alliance (LILA), the Oregon Bureau of Labor and Industries (BOLI), and/or to the US Department of Housing & Urban Development (HUDF) / Office of Fair Housing and Equal Opportunity (FHEO)

Homes for Good has a long-standing Policy on Reasonable Accommodation, which is recognized in the Pacific Northwest among public Housing Authorities and by the regional HUD office as being comprehensive , well-written, and well-implemented

Homes for Good's Policy on Reasonable Accommodation is prominently displayed in both administrative offices and in public areas of its various housing complexes. It is available to any applicant or resident and is included in the Admin Plan and Admissions and Continued Occupancy Policies. It is also posted on Homes for Good's website at www.HomesforGood.org

Applicants for, and recipients of, housing assistance from Homes for Good are advised of their right to request a reasonable accommodation to their disability. Information regarding reasonable accommodations is provided on the pre-application for assistance, in initial determination of ineligibility, in the public housing and assisted housing lease agreements, in notices of eviction, in periodic resident newsletters, and discussed during the intake process during any informal settlement discussions and during other discussions with applicants and/or residents when inquiries are made about accommodating disabilities.

Under the terms of a voluntary compliance agreement between the us department of HUD/FHEO and Homes for Good's pre application for housing assistance requests information from applicants – which is not used in determining their eligibility for housing regarding their ethnicity, race, and disability status. This information is recorded and retained and available to HUD upon request

Homes for Good created the diversity committee in April 2000. That committee was renamed the Inclusion Council in 2012. As a function of that committee, Homes for Good has completed outreach presentations to agencies representing youth, seniors/elderly, persons with physical and/or mental disabilities, and minorities, to help assure that a broad base of the community has access to information about the availability of housing. This outreach effort continues on an ongoing basis and representatives from a number of those social service/advocacy agencies serve on Homes for Good's family self-sufficiency advisory board, the inclusion council has also done outreach at the Festival Latina, the Asian celebration, project homeless connect, and other community gatherings

Homes for Good maintains reception staff – as well as other staff in all departments that have ongoing contact with residents who are bilingual/bicultural in Spanish and English

Homes for Good has also worked to increase the ability of low income community members to access housing by developing an innovative program in cooperation with community lending-works, the lending arm of NEDCO (neighborhood economic development corporation), to assist applicants to its agency-owned housing programs, in obtaining loans to cover the cost of their security deposits, as they lease up with Homes for Good. Homes for Good indemnifies the loans, guaranteeing payment to NEDCO, should the applicant default.

APPENDIX B: ADMIN PLAN MODIFICATIONS

HIGHLIGHTS:

Throughout:

- Name Change
- HUD Form number Updates
- VAWA Updates
- Other minor regulatory changes
- Minor changes to increase clarity of existing policies

Chapter 3: Eligibility

- Change requirement for inclusion in family from 51% custody or greater to 50% custody or greater
- Added option for additional background checks

Chapter 7: Verification

- Assets totaling \$5,000 or less to be reviewed every three years rather than annually

Chapter 15: Special Housing Types

- Addition of Single Room Occupancy & Shared Housing as Special Housing Programs

**KEY MODIFICATIONS TO THE HOMES FOR GOOD
ADMINISTRATIVE PLAN FOR THE HOUSING CHOICE VOUCHER PROGRAM (ADMIN PLAN)
PROPOSED EFFECTIVE DATE 10-1-18**

Section	Previous Policy	Proposed Policy	Required Change	Impact
Throughout	HACSA	Homes for Good	No	Agency rebranding process
1-I.D.	The PHA's administrative plan is applicable to the operation of the Housing Choice Voucher program. In addition, the administrative plan addresses policies for the following special programs: <ul style="list-style-type: none"> • Family Self Sufficiency • Single room occupancy (SRO) • Homeownership • Veterans Affairs Supportive Housing (VASH) 	The PHA's administrative plan is applicable to the operation of the Housing Choice Voucher program. In addition, the administrative plan addresses policies for the following special programs: <ul style="list-style-type: none"> • Project Based Voucher (PBV) & Rental Assistance Demonstration Project Based Voucher (RAD PBV) • Family Self Sufficiency • Single room occupancy (SRO) • Homeownership • Veterans Affairs Supportive Housing (VASH) 	No	Added Clarity
1-II.D.	N/A	24 CFR Part 100: The Fair Housing Act	Yes	HUD Regulation
2-I.A.	State protected classes in addition to already federal protected classes, and in addition to those protections offered under the Equal Access in Housing Final Rule include: <ul style="list-style-type: none"> • Sex (includes pregnancy) • Retaliation for opposing an unlawful employment practice • Association with a member of a protected class • Age (18 or older) • Family relationship State discrimination law also prohibits a person from refusing to sell, lease, or rent any real property because of an individual's source of income.	In addition to Federal law, the State of Oregon recognizes Sexual orientation, marital status, and source of income as additional protected classes. Furthermore City of Eugene adds Ethnicity and domestic partnership status.	Yes	Align with federal, state, and local protected classes.
3-I.C.	N/A	In accordance with Notice PIH 2017-08, for HUD-Veterans Affairs Supportive Housing (HUD-VASH) vouchers, when the veteran is the	Yes	HUD Regulation

Section	Previous Policy	Proposed Policy	Required Change	Impact
		perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator's HUD-VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD-VASH voucher, which must be issued to another eligible family upon the voucher's turnover.		
3-I.E.	A marriage partner includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.	A marriage partner includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse. In the case of a common law marriage, to be recognized by the PHA, the marriage must meet the requirements of the state where the common-law marriage occurred.	No	Provides guidance on as to how the PHA will define common law marriage as the state of Oregon does not have common law marriage.
3-I.F.	Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 percent or more of the time.	Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the time.	No	Provides a parent the opportunity to house a child when the parents have joint custody.
3-I.J	Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 51 percent of the time, are not subject to the time limitations of guests as described above.	Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 50 percent of the time, are not subject to the time limitations of guests as described above.	No	Provides a parent the opportunity to house a child when the parents have joint custody.
3-III.B.	The PHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the PHA is able to verify that the	The PHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the PHA is able to verify that the	No	Expands housing opportunities to those who are actively engaged in

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	household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the PHA, or the person who committed the crime, is no longer living in the household.	household member who engaged in the criminal activity has completed or is currently participating in a supervised drug rehabilitation program approved by the PHA, or the person who committed the crime, is no longer living in the household.		rehabilitation programs
3-III.B.	<i>Currently engaged in</i> is defined as any use of illegal drugs during the previous six months.	<i>Currently engaged in</i> is defined as any use of illegal drugs during the previous six months. However, if the PHA is able to verify the household member who engaged in the illegal drug activity has completed, or is actively engaged, in a supervised drug rehabilitation program approved by the PHA, then the PHA will admit an otherwise eligible family.	No	Expands housing opportunities to those who are actively engaged in rehabilitation programs.
3-III.D.	The PHA will perform a criminal background check through local law enforcement for every adult household member. If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the PHA may request a fingerprint card and, if so, will request information from the National Crime Information center (NCIC).	The PHA will perform criminal background checks through the Oregon State Police Law Enforcement Data System (LEDS) database and Oregon court records (OJIN) or a commercial screening company for all adult household members. If the adult household member has resided outside the state of Oregon in the last 3 years, if the results of the criminal background check through LEDS indicates there has been criminal activity outside the state of Oregon, or the adult household member self-discloses out-of-state criminal activity in the last 3 years a commercial screening company will be used. If the adult household member has resided in Oregon for the last 3 years and there is no indication of out-of-state criminal activity the PHA will use the Oregon State Police Law Enforcement Data System (LEDS) database and Oregon court records (OJIN) to conduct the criminal background check.	No	Ensures applicants residing in the PHA's jurisdiction prior to application are screened in the same manner as applicants residing outside the PHA's jurisdiction at time of application.
3-III.F.	If based on a criminal record or sex offender registration information, an applicant family	If based on a criminal record or sex offender registration information, an applicant family	Yes	Added clarity

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	<p>appears to be ineligible the PHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 14 business days to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the information within that 14-day period, the denial of admission will stand. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.</p>	<p>appears to be ineligible the PHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 14 business days to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the information within that 14-day period, the PHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.</p>		
3-III.G.	Form HUD 5382	Form HUD 5380 & HUD 5382	Yes	Compliance with VAWA regulations
4-I.D.	<p>The PHA will send written notification of the preliminary eligibility determination within 14 business days of receiving a complete application. Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list. Applicants will be placed on the waiting list using a lottery system. Once each application has been randomly assigned a number, the applications will be placed on the waiting list in order of the assigned numbers and according to any preference(s) for which they qualify.</p>	<p>Upon successful completion of an application the applicant will be provided a computer generated receipt from the HAPPY software waiting list. It is the responsibility of the applicant to retain this receipt as proof of successful application submission. Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list. Applicants will be placed on the waiting list using a lottery system. Once each application has been randomly assigned a number, the applications will be placed on the waiting list in order of the assigned numbers and according to any preference(s) for which they qualify. All successful applicant submissions will enter into a lottery. Those randomly selected will receive a letter assigning them their lottery number. Those who are not selected thru the random lottery process will receive a letter stating they</p>	No	Added clarity

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		were not selected.		
4-II.E.	While the family is on the waiting list, the family must immediately inform the PHA of changes in contact information, including current residence, mailing address, and phone number. The changes may be submitted in writing, via telephone, in person, or by email, and a note added to the applicant's electric file.	While the family is on the waiting list, the family must immediately inform the PHA of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing, via telephone, in person, or by email, and a note added to the applicant's file.	No	Added clarity
4-II.F.	If the notice is returned by the post office the applicant will be removed from the waiting list without further notice.	If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 14 business days to respond from the date the letter was re-sent.	No	Increases an applicant's opportunity to apply for housing if the applicant has moved.
4-III.C.	N/A	Under this policy selected is defined as the date in which the voucher was issued.	No	Added clarity
4-III.D.	If a notification letter is returned to the PHA, the family will be removed from the waiting list without further notice.	If a notification letter is returned to the PHA with no forwarding address, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any known alternate address.	No	Increases an applicant's opportunity to apply for housing if the applicant has moved.
5-I.B.	If the notice is returned by the post office, the applicant will be denied and their name will not be placed back on the waiting list.	If the notice is returned by the post office with no forwarding address, the applicant will be denied and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.	No	Increases an applicant's opportunity to apply for housing if the applicant has moved.
5-I.B.	Information about the protections afforded by the Violence against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault, and stalking (see section 16-IX.C)	The form HUD-5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights, which contains information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking	Yes	Compliance with VAWA regulations
5-II.E.	The PHA will approve extensions beyond 120	The PHA will approve additional extensions only	No	Allows a family the

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	<p>days only if an extension is necessary as a reasonable accommodation for a person with disabilities. In such case, the PHA will decide whether to approve or deny an extension in line with the PHA's Reasonable Accommodation process.</p>	<p>in the following circumstances: It is necessary as a reasonable accommodation for a person with disabilities. It is necessary due to reasons beyond the family's control, as determined by the PHA. Following is a list of extenuating circumstances that the PHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted: <ul style="list-style-type: none"> Serious illness or death in the family Other family emergency Obstacles due to employment Whether the family has already submitted requests for tenancy approval that were not approved by the PHA Whether family size or other special circumstances make it difficult to find a suitable unit Any request for an additional extension must include the reason(s) an additional extension is necessary. The PHA may require the family to provide documentation to support the request or obtain verification from a qualified third party. All requests for extensions to the voucher term must be made in writing and submitted to the PHA prior to the expiration date of the voucher (or extended term of the voucher). The PHA will decide whether to approve or deny an extension request within 14 business days of the date the request is received, and will immediately provide the family written notice of its decision.</p>		<p>possibility of additional time to locate housing when the reason housing was not found was beyond the family's control.</p>
6-I.B.	<p>Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 percent or more of the</p>	<p>Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the</p>	No	<p>Allows parents with joint custody to decide who will receive subsidy and avoid legal</p>

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	time.	time.		processes.
6-I.G.	The PHA will initially set the imputed asset passbook rate within 0.75 percent of the national rate established by the Federal Deposit Insurance Corporation (FDIC). The PHA will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be adjusted accordingly. Changes to the passbook rate will take effect on January 1 following the December review.	The PHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC). The PHA will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate. Changes to the passbook rate will take effect on February 1 following the December review.	No	Allows for sufficient notice to tenant of change.
6-III.D.	At reexamination, the PHA must use the PHA current utility allowance schedule [24 CFR 982.517(d)(2)]	At reexamination, the PHA must use the PHA current utility allowance schedule HCV GB, p. 18-8	Yes	HCV Guidebook reference
Throughout Chapter 7	HUD's Verification Hierarchy [Notice PIH 2010-19]	HUD's Verification Hierarchy [Notice PIH 2017-12]	Yes	PIH Notice update
7-I.D.	The PHA will send third-party verification forms directly to the third party.	The PHA may send third-party verification forms directly to the third party.	No	Allows flexibility for tenant to provide verification
7-I.D.	For families with net assets totaling \$5,000 or less, the PHA will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration. The PHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every year thereafter.	For families with net assets totaling \$5,000 or less, the PHA will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration. The PHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.	No	Families with assets below \$5,000 only have to provide bank statement every 3 years.
8-I.E.	If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical	If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or	Yes	Provides Clarity

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	<p>health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the PHA must complete a risk assessment of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner. Within 30 days after receiving the risk assessment report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with Section 8-II.G. PHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.</p>	<p>medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the PHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner. Within 30 days after receiving the environmental investigation report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with Section 8-II.G. PHA reporting requirements, and data collection and record keeping responsibilities related to children with an elevated blood lead level are discussed in Chapter 16.</p>		
8-II.B.	<p>If utility service is not available for testing at the time of the initial inspection, the PHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. The PHA will reinspect the unit to confirm that utilities are operational before the HAP contract is executed by the PHA.</p>	<p>If utility service (electric, gas, water) is not available for testing at the time of the initial inspection, the PHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. The PHA will reinspect the unit to confirm that utilities are operational before the HAP contract is executed by the PHA.</p>	No	Allows a family to provide written verification of trash service.

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		If the family is responsible for supplying the trash service, the PHA will allow the trash service to be placed in the unit after the unit has met all other HQS requirements. The required trash service must be in place before the HAP contract is executed by the PHA. The PHA will execute the HAP Contract based upon certification from the family that the trash service has been installed. Trash service is defined as: a garbage can with a lid that will be transported to a recycling/trash center on a regular basis or service from a local trash removal provider such as Sanipac or Lane Apex.		
8-III.B.	The PHA will determine whether the requested increase is reasonable within 30 days prior to when the increase is to be implemented. The owner will be notified of the determination.	The PHA will determine whether the requested increase is reasonable within 30 days prior to when the increase is to be implemented. The owner will be notified of the determination. If the requested increase is determined unreasonable then the owner will need to provide three comparable unassisted units.	No	Aligns with the PHA's process of providing rent comparable when not owner provided.
8-III.D.	The PHA will determine whether the requested increase is reasonable within 30 days prior to when the increase is to be implemented. The owner will be notified of the determination.	The PHA will determine whether the requested increase is reasonable within 30 days prior to when the increase is to be implemented. The owner will be notified of the determination. If the requested increase is determined unreasonable then the owner will need to provide three comparable unassisted units.	No	Aligns with the PHA's process of providing rent comparable when not owner provided.
Exhibit 8-1	Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must: <ul style="list-style-type: none"> • Disclose known lead-based paint hazards to prospective tenants before the lease is signed, • provide all prospective families with "Protect Your Family from Lead in Your Home", 	Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must: <ul style="list-style-type: none"> • Disclose known lead-based paint hazards to prospective tenants before the lease is signed, • provide all prospective families with "Protect 	Yes	Provides clarity

Section	Previous Policy	Proposed Policy	Required Change	Impact
	<ul style="list-style-type: none"> Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA Notify tenants each time such an activity is performed Conduct all work in accordance with HUD safe practices As part of ongoing maintenance ask each family to report deteriorated paint. <p>For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.</p> <p>See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.</p>	<p>Your Family from Lead in Your Home",</p> <ul style="list-style-type: none"> Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA Notify tenants each time such an activity is performed Conduct all work in accordance with HUD safe practices As part of ongoing maintenance ask each family to report deteriorated paint. Maintain covered housing without deteriorated paint if there is child under six in the family. <p>For units occupied by elevated blood lead level (lead poisoned) children under six years of age, an environmental investigation must be conducted (paid for by the PHA). If lead hazards are identified during the environmental investigation, the owner must complete hazard reduction activities within 30 days.</p> <p>See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.</p>		
9-I.B.	<p>Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by fax. The family may not submit, and the PHA will not process, more than one (1) RTA at a time. When the family submits the RTA the PHA will review the RTA for completeness. If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, the PHA will notify the family and the owner of the deficiencies.</p> <p>Missing information and/or missing documents</p>	<p>Completed RTA must be submitted as hard copies, in-person, by mail, email, or by fax. The family may not submit, and the PHA will not process, more than one (1) RTA at a time. When the family submits the RTA the PHA will review the RTA for completeness. If the RTA is incomplete (including lack of signature by family, owner, or both) the PHA will notify the family and the owner of the deficiencies.</p> <p>Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, email, or by fax. If the PHA deems</p>	No	Allows e-mail as an acceptable method to provide documents to the PHA.

Section	Previous Policy	Proposed Policy	Required Change	Impact
	will only be accepted as hard copies, in-person, by mail, or by fax. If the PHA deems necessary, the PHA will accept missing information over the phone, clearly noting the changes in red and noting who authorized the change.	necessary, the PHA will accept missing information over the phone, clearly noting the changes in red and noting who authorized the change.		
9-I.E.	If the dwelling lease is incomplete or incorrect, the PHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The PHA will not accept missing and corrected information over the phone	If the dwelling lease is incomplete or incorrect, the PHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, email , or by fax. The PHA will not accept missing and corrected information over the phone	No	Allows e-mail as an acceptable method to provide documents to the PHA.
10-I.A.	<p>If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will request documentation in accordance with section 16-IX.D of this plan.</p> <p>The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the PHA will document the waiver in the family's file.</p> <p>The PHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan.</p>	<p>If a family requests permission to move with continued assistance or for an external transfer to another covered housing program operated by the PHA based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will request that the resident request the emergency transfer using form HUD-5383, and the PHA will request documentation in accordance with section 16-IX.D of this plan.</p> <p>The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the PHA will document the waiver in the family's file.</p> <p>Before granting an emergency transfer, the PHA will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.</p> <p>The PHA has adopted an emergency transfer</p>	Yes	Compliance with VAWA regulations

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		plan, which is included as Exhibit 16-3 to this plan, and discusses external transfers to other covered housing programs.		
10-II.B.	For participating families approved to move under portability, the PHA will issue a new voucher within 14 business days of the PHA's written approval to move. The initial term of the voucher will be 120 days .	For participating families approved to move under portability, the PHA will issue a new voucher within 14 business days of the PHA's written approval to move. The initial voucher term will be 60 calendar days .	No	Allows the PHA to issue vouchers for an initial term of 60 days.
10-II.C.	The PHA will send a copy of the updated HUD-50058 by regular mail no later than 10 business days after the effective date of the reexamination.	The PHA will send a copy of the updated HUD-50058 by regular mail no later than 14 business days after the effective date of the reexamination.	No	Aligns with other PHA policies that provide 14 business days.
11-I.C.	An advocate, interpreter, or other assistant may assist the family in the reexamination process. The family and the PHA must execute a certification attesting to the role and the assistance provided by any such third party.	An advocate, interpreter, or other assistant may assist the family in the reexamination process.	No	Streamlines the ability for the advocate to provide assistance for the family.
11-II.D.	Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 14 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by fax, or in person.	Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 14 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by fax, email , or in person.	No	Allows flexibility for tenant to provide verification by further defining acceptable format.
11-III.B.	At reexamination, the PHA must use the PHA current utility allowance schedule [24 CFR 982.517(d) (2)].	At reexamination, the PHA must use the PHA current utility allowance schedule HCV GB, p. 18-8].	Yes	Guidebook Reference
12-I.E.	The PHA will not terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.	Additionally, per the alternative requirements listed in the Federal Register notice dated December 29, 2014, PHAs are no longer permitted to terminate assistance to a family due to the family's failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation [FR Notice 12/29/14].	Yes	Allows families to participate in the Family Self Sufficiency Program without losing Section 8 assistance.
12-II.E.	Even when a victim poses an actual and	In order to demonstrate an actual and imminent	Yes	Clarifies evidence

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	imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d) (3)].	threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d) (3)].		necessary to determine whether the victim of domestic violence is a threat to others.
12-II.E.	Whether the threat is likely to happen within a short period of time	Whether the threat is likely to happen within an immediate time frame.	No	Factors in immediate time frame when determining whether a program participant domestic violence victim is a threat to others on the property.
12-II.E.		If the perpetrator remains in the unit, the PHA continues to pay the owner until the PHA terminates the perpetrator from the program. The PHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month [Notice PIH 2017-08]. If the perpetrator is the only participant eligible to receive assistance, the PHA will provide any remaining participant a chance to establish eligibility for the program. If the remaining participant cannot do so, the PHA will provide them with 30 days to establish eligibility for another housing program prior to termination of the HAP contract.	Yes	Clarifies assistance term for domestic violence perpetrators.
EXHIBIT 12-1	N/A	The family must not engage in abusive or violent behavior towards PHA personnel. Abusive or violent behavior towards PHA personnel includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be	No	Provides protection for staff

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		considered abusive or violent behavior. Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.		
13-II.E.	In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the PHA any housing assistance payment received after this period.	In accordance with HUD requirements, the PHA will never pay HAP for any month after the month the family vacates the unit. This includes the death of the sole family member. In all other cases HAP would terminate the end of the month following the month the Landlord is notified.	No	Provides clarity for when HAP will and will not be paid.
13-II.E.	N/A	The subsidy between the old unit and the new unit will not overlap for more than five (5) calendar days.	No	Provides clarity for when HAP will and will not be paid.
CH 15	Families will be permitted to use the Homeownership option. Families will not be permitted to use any other special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.	Families will be permitted to use the Homeownership option. Families will be permitted to use the Single Room Occupancy. Families will be permitted to use the Shared Housing. Families will not be permitted to use any other special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.	No	Expanding housing opportunities by opening up Shared Housing.
15-VII.F.	If required by the PHA, families must attend and complete post-purchase ongoing homeownership counseling.	Remove language	No	No longer an available option.
15-VII.H.	As a check against predatory lending, the PHA will review the financing of each purchase transaction, including estimated closing costs. The PHA will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. The PHA also will not approve "seller financing" or "owner-held" mortgages. Beyond these basic criteria, the PHA will rely on the lenders to determine that the loan will be affordable to program participants.	As a check against predatory lending, the PHA will review the financing of each purchase transaction, including estimated closing costs. The PHA will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. The PHA also will not approve "seller financing" " rent to own agreements " or "owner-held" mortgages. Beyond these basic criteria, the PHA will rely on the lenders to determine that the loan will be	No	Added Clarity

Section	Previous Policy	Proposed Policy	Required Change	Impact
		affordable to program participants.		
15-VII.I.	Effective with new homeownership clients starting the program January 1, 2017 or later, homeownership clients are required to meet with their designated Housing Specialist in an in-person interview annually, either at the HACSA office or in the client's home. At this meeting the family must provide documentation of money spent on home repairs or provide documentation showing that they are saving at least the amount of their monthly maintenance/repair allowance. For new clients starting the program effective January 1, 2017 or later, inspections will be done on a semi-annual basis. Results of this inspection will be discussed with the client at an annual meeting with agency staff that will be scheduled within two weeks of the inspection. The family will be encouraged to make necessary repairs and potential budgeting and access to community resources to assist with repairs will be discussed at this meeting. Clients will not be required to do repairs as a condition for ongoing assistance.	Effective with new homeownership clients starting the program January 1, 2017 or later, homeownership clients may request to meet with their designated Housing Specialist in an in-person interview annually, either at the Homes for Good office or in the client's home. At this meeting the family must provide documentation of money spent on home repairs or provide documentation showing that they are saving at least the amount of their monthly maintenance/repair allowance.	No	Aligns with HQS rules
15-VII.K.	The PHA's housing assistance payment will be paid directly to the lender. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.	The PHA's housing assistance payment will be normally paid directly to the lender, unless the lender will only accept one payment per month. If the lender refuses multiple monthly payments, the PHA will pay the HAP directly to the client. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.	No	Added Clarity
15-VII.L.	The PHA issues transfer vouchers for 120 days .	The PHA issues transfer vouchers for 60 calendar days .	No	Allows the PHA to issue vouchers for an initial term of 60 days.
15-VII.N.	The PHA may also deny or terminate assistance for violation of participant obligations described	The PHA may also deny or terminate assistance for violation of participant obligations described	Yes	Regulation change

Section	Previous Policy	Proposed Policy	Required Change	Impact
	in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy.	in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy, with the exception of failure to meet obligations under the Family Self-Sufficiency program as prohibited under the alternative requirements set forth in FR Notice 12/29/14.		
16-II.B.	Changes to payment standard amounts will be effective on December 1st of every year unless, based on the proposed FMRs, it appears that one or more of the PHA's current payment standard amounts will be outside the basic range when the final FMRs are published. In that case, the PHAs payment standards will be effective October 1st instead of December 1st. If the PHA has already processed reexaminations that will be effective on or after October 1st, and the effective date of the payment standards is October 1st, the PHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by the PHA at the time the reexamination was originally processed.	Changes to payment standard amounts will be effective on January 1st of every year, or within three months of the FMR effective date. The effective date is applicable both to HUD-required revisions and to discretionary revisions.	Yes	Allows PHA to modify Payment Standards within three months of FMR changes even when the FMR change results in the Payment Standard being outside of the 90% to 100% FMR range.
16-III.C.	A copy of the hearing must be furnished promptly to the family.	The hearing officer will mail a "Notice of Hearing Decision" to the PHA and to the participant within 14 business days from the date of the hearing. This notice will be sent by first-class mail. The participant will be mailed the original "Notice of Hearing Decision". A copy of the "Notice of Hearing Decision" will be maintained in the PHA's file.	No	Provides clarity
16-III.C.	The PHA will mail a "Notice of Final Decision" including the hearing officer's report to the participant and their representative. This notice will be sent by first-class mail. The participant will be mailed the original "Notice of Final Decision" and a copy of the "Notice of Final Decision" will be maintained in the PHA's file.	The Division Director has the authority to determine that the PHA is not bound by the decision of the hearing officer because the PHA was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or	No	Provides clarity on regulation for how a PHA is to respond to the decision making of the hearings officer.

Section	Previous Policy	Proposed Policy	Required Change	Impact
		the decision was otherwise contrary to federal, state, or local laws. In such a case, the PHA will mail a "Notice of Final Decision" to the PHA and the participant within 14 business days. The "Notice of Final Decision" will be sent by first-class mail. A copy of this notice will be maintained in the PHA's file.		
16-IV.B.	If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will ban the owner from future participation in the program and pursue other modes of collection.	If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA may ban the owner from future participation in the program and pursue other modes of collection.	No	Provides the PHA flexibility on whether to ban or not ban landlords who do not repay HAP.
16-VI.B.	N/A	The PHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under the PHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].	Yes	Provides privacy for victims of domestic violence.
16-VII.A.-C	"Environmental Intervention Blood Lead Level"	"Elevated Blood Lead Level"	Yes	Provides clarity
16-VII.B.	The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.	The owner must report the name and address of a child identified as having an elevated blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional. The owner must also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days. The PHA may collaborate with the owner on the notification process, such as by agreeing with the owner to provide the required notifications on the owner's behalf.	Yes	Provides clarity
16-VII.B.	The PHA will provide the public health	Upon notification by the owner, the PHA will	Yes	Provides clarity.

Section	Previous Policy	Proposed Policy	Required Change	Impact
	department written notice of the name and address of any child identified as having an environmental intervention blood lead level.	provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days. Upon notification by the owner, the PHA will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.		
16-IX.C.	N/A	The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PHA make alternative delivery arrangements that will not put the victim at risk.	Yes	Compliance with VAWA regulations
16-IX.C.	N/A	Whenever the PHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the PHA may decide not to send mail regarding VAWA protections to the victim's unit if the PHA believes the perpetrator may have access to the victim's mail, unless requested by the victim. When discussing VAWA with the victim, the PHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room. The victim may, but is not required to, designate an attorney, advocate, or other	Yes	Compliance with VAWA regulations

Section	Previous Policy	Proposed Policy	Required Change	Impact
		secure contact for communications regarding VAWA protections.		
16-IX.C.	The PHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program and at least annually thereafter.	The PHA will provide owners and managers with information about their rights and obligations under VAWA annually.	Yes	Compliance with VAWA regulations
16-IX.D.	(1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim	(1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.	Yes	Compliance with VAWA regulations
16-IX.D.	The PHA may, in its discretion, extend the deadline for 14 business days. Any extension granted by the PHA will be in writing.	The PHA may, in its discretion, extend the deadline for 14 business days. In determining whether to extend the deadline, the PHA will consider factors that may contribute to the victim’s inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim’s need to address health or safety issues. Any extension granted by the PHA will be in writing. Once the victim provides documentation, the PHA will acknowledge receipt of the documentation within 10 business days.	Yes	Compliance with VAWA regulations
16-IX.D.	In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide	In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide	Yes	Compliance with VAWA regulations

Section	Previous Policy	Proposed Policy	Required Change	Impact
	acceptable third-party documentation, as described above (forms 2 and 3) within 30 calendar days of the date of the request for third-party documentation. The PHA must honor any court orders issued to protect the victim or to address the distribution of property.	acceptable third-party documentation, as described above (forms 2 and 3) The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].		
16-IX.D.	If presented with conflicting certification documents (two or more forms HUD-5382) from members of the same household, the PHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made. The family will have 30 calendar days from the date of request by the PHA to provide this documentation.	If presented with conflicting certification documents from members of the same household, the PHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made. When requesting third-party documents, the PHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation. If the PHA does not receive third-party documentation within the required timeframe (and any extensions) the PHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the PHA will hold separate hearings for the applicants or tenants.	Yes	Compliance with VAWA regulations
16-IX.D.	The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse	The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of	Yes	Compliance with VAWA regulations

Section	Previous Policy	Proposed Policy	Required Change	Impact
	in accordance with 24 CFR 5.2007(b).	abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.		
EXHIBIT 16-5	SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)	MODEL OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS	Yes	Compliance with VAWA regulations
CH. 17	N/A	PIH 2017-21	Yes	HUD Regulation
17-I.A.	The PHA may project-base an additional 10 percent of its units above the 20 percent program limit, if the units	The PHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. Units qualify under this exception if the units	Yes	Regulation provides definitions of what families are to be served under additional use of PBV.
17-I.A.	Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).	Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.	Yes	Regulation provides definitions of what families are to be served under additional use of PBV.
17-I.A.	The PHA will not set aside units above the 20 percent program limit.	The PHA may set aside units above the 20 percent program limit.	No	Provides the PHA the option to set aside units.
17-I.A.	In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. In order to be excepted, the unit must meet the following conditions: <ul style="list-style-type: none"> • The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17; and • In the five years prior to the date the PHA either issued the RFP or selected the project, the unit either: 	In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17.	Yes	Provides clarity.

Section	Previous Policy	Proposed Policy	Required Change	Impact
	<p>- Received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for Elderly (Section 202), Housing for Persons with Disabilities (section 811), Rent Supplement (Rent Supp), or Rental Assistance Program (RAP); or</p> <p>- The unit was subject to a rent restriction through a loan or insurance program as a result of Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for Elderly Persons (Section 202), or Housing for Persons with Disabilities (Section 811)</p> <p>Units that have previously received either PBV or HCV assistance are not covered under the exception.</p>			
17-I.A.	N/A	The PHA may project-base any units not subject to the 20 percent cap.	No	Provides clarity
17-II.B.	N/A	The PHA may attach PBVs to projects owned by the PHA as described above.	No	Provides clarity
17-II.B.	N/A	Any additional requirements will be noted in the Request for Proposal.	No	Allows PHA to produce Request for Proposals that give information as needed to the respondent for specific proposal requests.
17-II.B.	In addition, the PHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the PHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The PHA will also post the notice of owner selection on its electronic web site.	The PHA will post the notice of owner selection on its electronic web site.	No	Removes the need to publish PBV awards in the Register Guard.
17-II.F.	<p>Exceptions are allowed and PBV units are not counted against the 25 percent or 25-unit per project cap if:</p> <ul style="list-style-type: none"> • The units are exclusively for elderly families • The units are for households eligible for 	<p>As of April 18, 2017, units are not counted against the 25 percent or 25-unit per project cap if:</p> <ul style="list-style-type: none"> • The units are exclusively for elderly families • The units are for households eligible for 	Yes	Provides clarity.

Section	Previous Policy	Proposed Policy	Required Change	Impact
	<p>supportive services available to all families receiving PBV assistance in the project</p> <ul style="list-style-type: none"> • The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates 	<p>supportive services available to all families receiving PBV assistance in the project</p> <ul style="list-style-type: none"> • If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17]. 		
17-II.F.	<p>If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.</p>	<p>The PHA will evaluate supportive services based on community need.</p>	No	<p>Allows a variety of supportive service options to be implemented based on community need.</p>
17-II.F.	<p>The PHA will not provide assistance for excepted units. Beyond that, the PHA will not impose any further cap on the number of PBV units assisted per project.</p>	<p>The PHA may provide assistance for excepted units.</p>	No	<p>Allows the PHA the option to provide assistance for excepted units.</p>
17-III.D.	<p>The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS</p>	<p>The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with HQS.</p>	No	<p>Provides clarity on PHA policy</p>

Section	Previous Policy	Proposed Policy	Required Change	Impact
	inspection as a result of only non-life-threatening conditions.			
17-III.D.	The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.	The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS.	No	Provides clarity on PHA policy
17-III.D.	Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.	Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions or if the unit passed an alternative inspection.	Yes	Regulations provide clarification on potential HQS options.
17-IV.B.	The PHA will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.	The PHA will enter into the Agreement with the owner within 14 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.	No	Aligns with other PHA policies that provide 14 business days.
17-V.B.	For existing housing, the HAP contract will be executed within 10 business days of the PHA determining that all units pass HQS. For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the PHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.	For existing housing, the HAP contract will be executed within 14 business days of the PHA determining that all units pass HQS. For rehabilitated or newly constructed housing, the HAP contract will be executed within 14 business days of the PHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.	No	Aligns with other PHA policies that provide 14 business days.
17-VI.C.	The PHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. The PHA	The PHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. The PHA	No	Provides information on current PBV waiting lists

Section	Previous Policy	Proposed Policy	Required Change	Impact
	currently has waiting lists for the following PBV projects: Under RAD PBV conversion PHA reserves the right to add additional waiting lists as needed to manage a PBV program.	currently has waiting lists for the following PBV projects: PHA reserves the right to add additional waiting lists as needed to manage a PBV program. Richardson Bridge – 2 bedroom & 3 bedroom waiting lists. With a total of 12 PBV.		
17-VII.C.	N/A	Emergency Transfers under VAWA [Notice PIH 2017-08] Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4). HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.	Yes	Provides housing options for victims of domestic violence.
17-VII.C.	N/A	When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, the PHA will provide several options for continued assistance. The PHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible. If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or	Yes	Compliance with VAWA regulations

Section	Previous Policy	Proposed Policy	Required Change	Impact
		<p>assistance in the PHA's public housing program. Such a decision will be made by the PHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.</p> <p>If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the PHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.</p> <p>If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to the PHA's public housing program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process.</p>		
17-VII.D.	<p>The PHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:</p> <ul style="list-style-type: none"> • The units are exclusively for elderly families • The units are for households eligible for 	<p>As of April 17, 2018 the PHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:</p> <ul style="list-style-type: none"> • The units are exclusively for elderly families 	Yes	Provides clarity.

Section	Previous Policy	Proposed Policy	Required Change	Impact
	<p>supportive services available to all families receiving PBV assistance in the project</p> <ul style="list-style-type: none"> The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates 	<ul style="list-style-type: none"> The units are for households eligible for supportive services available to all families receiving PBV assistance in the project If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17]. 		
17-VIII.B.	N/A	The PHA may apply SAFMRs to the PHA's PBV program.	Yes	Provides the option to apply SAFMRs.
18-II.C.	N/A	The definition of control/ownership provided under Notice PIH 2012-32, REV-3 (listed above) is used specifically to determine whether a PHA retains control over a project for purposes of HUD's requirement for ownership or control of the covered project under RAD. For purposes of determining whether an independent entity will perform certain functions for the project, the definition of PHA-owned under Notice PIH 2017-21 is used. This is the same definition used for standard PBV units. In some cases, a project may meet the RAD definition of ownership or control, but may not be considered PHA-owned for purposes of requiring an independent entity.	Yes	Provides clarity.
18-III.D.	Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.	Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions or if the unit passed an alternative inspection.	Yes	Regulations provide clarification on potential HQS options.
18-III.D.	N/A	The PHA will not provide assistance in turnover units until the unit fully complies with HQS.	Yes	Added Clarity
18-IV.C.	The PHA will not float assistance among	The PHA may float assistance among	No	Provides the PHA the

Section	Previous Policy	Proposed Policy	Required Change	Impact
	unoccupied units within the project.	unoccupied units within the project.		option to move units within a project to provide housing.
18-IV.F.	The PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments.	The PHA may provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments.	No	Allows the PHA to address vacancy payments in the HAP Contract.
18-V.E.	The PHA will not offer any preferences for the RAD PBV program or for particular PBV projects or units.	The PHA may offer any preferences for the RAD PBV program or for particular PBV projects or units.	No	Allows the PHA the ability to serve special need populations within PBV.
18-VI.E.	The PHA will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to exercise mobility after one year of tenancy. This list will be maintained separately from the tenant-based HCV list. Families on the choice mobility waiting list will be given priority over families on the tenant-based waiting list. The choice mobility waiting list will be organized by date and time of the family's written request to exercise choice mobility. The list will also identify whether families live in standard or RAD PBV units.	PBV and RAD PBV families wishing to exercise mobility after one year of tenancy will be maintained amongst the tenant-based HCV list, and will be denoted with a preference point. This preference point will drive the family to the top of the tenant-based HCV list. Families on the choice mobility waiting list will be given priority over families on the tenant-based waiting list. The choice mobility waiting list will be organized by date received of the family's written request to exercise choice mobility.	No	Provides clarity
18-VI.E.	N/A	Emergency Transfers under VAWA	Yes	Compliance with VAWA regulations

APPENDIX C: ACOP MODIFICATIONS

HIGHLIGHTS:

Throughout:

Name Change
HUD Form number Updates
VAWA Updates
Other minor regulatory changes
Minor changes to increase clarity of existing policies

Chapter 3: Eligibility

Change requirement for inclusion in family from 51% custody or greater to 50% custody or greater
Added option for additional background checks

Chapter 4: Applications, Waiting List and Tenant Selection

Create a new preference for applicants who are participating in case-management, with an organization with whom Homes for Good has an MOU outlining such a preference.

Chapter 5: Occupancy Standards and Unit Offers

Increase Maximum Occupancy Standard by one, for each unit size

Chapter 8: Leasing and Inspections

New adults must sign the lease or a new lease

Chapter 9: Reexaminations

Resume conducting Interims for changes to income that would result in an increase in rent under two circumstances:
- New sources of income
- When an Interim has already been processed that decreased rent

Chapter 10: Pets

Changes to pet verification timelines

Chapter 14: Grievances and Appeals

Cost of copying hearing documents changed from \$5 plus \$0.05 per page to simply \$0.25 per page

**KEY MODIFICATIONS TO THE HOMES FOR GOOD
ADMISSIONS AND CONTINUED OCCUPANCY POLICIES (ACOP)
PROPOSED EFFECTIVE DATE 10-1-18**

Section	Previous Policy	Proposed Policy	Required Change	Impact
Throughout	HACSA www.hacsa.org	Homes for Good www.homesforgood.org	Yes	Agency rebranding process
Throughout	Notice PIH 2010-19 Notice PIH 2015-13	Notice PIH 2017-12 Notice PIH 2017-23	Yes	Updated versions of same notices
3-I.F	Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 51 percent or more of the time.	Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family 50 percent or more of the time.	No	Added Clarity
3-I.J	Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the public housing unit more than 51 percent of the time, are not subject to the time limitations of guests as described above.	Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the public housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.	No	Added Clarity
3-II.A	To be income eligible, the annual income of an applicant must be within the low-income limit.	To be income eligible, a family must be a low-income family.	No	Added clarity
3-III.A 3-III.F	In addition, HUD requires or permits the PHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. The PHA's authority in this	In addition, HUD requires or permits the PHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. The PHA's authority in this	Yes	Compliance with new VAWA guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
	area is limited by the Violence against Women Act of 2013 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(b)].	area is limited by the Violence against Women Act of 2013 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis or as a direct result of the fact that the applicant is or has been the victim of domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(b)].		
3-III.F	VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a notice of VAWA rights and the form HUD-5382 at the time the applicant is denied.	VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.	Yes	Compliance with new VAWA guidance
3-III.F	<p>The PHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the PHA’s policies.</p> <p>Therefore, if HACSA makes a determination to deny admission to an applicant family, the HACSA will include in its notice of denial information about the protection against denial provided by VAWA in accordance with section 16-VII.C of this ACOP, a notice of VAWA rights, and a copy of the form HUD-5382.</p>	<p>Homes for Good acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under Homes for Good’s policies.</p> <p>While Homes for Good is not required to identify whether adverse factors that resulted in the applicant’s denial are a result of domestic violence, dating violence, sexual assault, or stalking, the applicant may inform Homes for Good that their status as a victim is directly related to the grounds for the denial. Homes for Good</p>	No	Compliance with new VAWA guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
		<p>will request that the applicant provide enough information to Homes for Good to allow Homes for Good to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.</p> <p>Homes for Good will include in its notice of denial information about the protection against denial provided by VAWA in accordance with section 16-VII.C of this ACOP, a notice of VAWA rights, and a copy of the form HUD-5382.</p>		
3-III.D	<p>HACSA will perform criminal background checks through local law enforcement or a commercial screening company for all adult household members.</p> <p>If the results of the criminal background check indicate there may have been past criminal activity, but the results are inconclusive, or if the applicant resided outside of the state of Oregon, HACSA may request a fingerprint electronically and may request information from the National Crime Information Center (NCIC).</p> <p>HACSA may use the Oregon State Police Law Enforcement Data System (LEDS) database and court records or a commercial screening company to screen applicants for admission.</p>	<p>Homes for Good will perform criminal background checks through the Oregon State Police Law Enforcement Data System (LEDS) database and Oregon court records (OJIN) or a commercial screening company for all adult household members.</p> <p>If the adult household member has resided in Oregon for the last 3 years and there is no indication of out-of-state criminal activity Homes for Good will use the Oregon State Police Law Enforcement Data System (LEDS) database and Oregon court records (OJIN) to conduct the criminal background check.</p> <p>An additional layer of screening (for example, through a commercial screening company or the National Crime</p>	No	Allows for a more-similar screening process for in-state and out-of-state applicants

Section	Previous Policy	Proposed Policy	Required Change	Impact
		<p>Information Center) will be used if: the adult household member has resided outside the state of Oregon in the last 3 years, the results of the criminal background check through LEDS indicates there has been criminal activity outside the state of Oregon, or the adult household member self-discloses out-of-state criminal activity in the last 3 years.</p>		
3-III.E	<p>HACSA will require the applicant to submit evidence of the household member’s successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.</p>	<p>Homes for Good may require the applicant to submit evidence of the household member’s successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.</p>	No	<p>Provide greater flexibility in evaluating case-by-case circumstances</p>
4-III.B	-N/A-	<p>Homes for Good will apply a waiting list preference worth 5 points for applicants who are case-managed by a service provider with whom the Homes for Good Property Management Division has a signed Memorandum of Understanding (MOU) outlining such a preference. The preference will be specific to the properties and service providers covered by the MOU.</p>	No	<p>Creates a new preference by which Homes for Good can more effectively partner with local agencies to address community needs.</p>
4-III.B	-N/A-	<p>Homes for Good has mixed population developments at the following properties:</p> <ul style="list-style-type: none"> • Portion of AMP 100 Laurelwood Homes (1-bedroom units) • Portion of AMP 200 McKenzie Village (1-bedroom units) • AMP 400 Parkview Terrace 	No	<p>Reflects existing designations from HUD for Mixed Population (Elderly/Disabled) developments</p>

Section	Previous Policy	Proposed Policy	Required Change	Impact
		<ul style="list-style-type: none"> • AMP 500 Lindeborg Place • AMP 500 Veneta Villa • AMP 600 Cresview Villa • AMP 600 Riverview Terrace 		
4-III.B	HACSA has designated elderly/non-elderly disabled designated housing at this time.	Homes for Good has no properties designated for elderly families or disabled families.	No	Corrects typo
4-III.E	HACSA will notify a family of their eligibility within 14 calendar days of the determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.	<p>Homes for Good will notify a family of their eligibility within 14 calendar days of the determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.</p> <p>Homes for Good will expedite the administrative process for determining eligibility to the extent possible for applicants who are admitted to the public housing program as a result of an emergency transfer from another Homes for Good program.</p>	No	Compliance with new VAWA guidance
4-III.E	Upon making an eligibility determination, the PHA must provide the family a notice of VAWA rights as noted in the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of eligibility determination. This notice must be provided in both of the following instances: (1) when a family is notified of its eligibility; or	The PHA must provide the family a notice of VAWA rights (form HUD-5380) as well as the HUD VAWA self-certification form (form HUD-5382) in accordance with the Violence against Women Act of 2013, and as outlined in 16-VII.C. at the time the applicant is provided assistance or at the time the applicant is denied assistance. This notice must be provided in both of the following instances: (1) when a family actually begins receiving assistance (lease execution); or (2) when a	Yes	Compliance with new VAWA guidance

Section	Previous Policy			Proposed Policy			Required Change	Impact																					
	(2) when a family is notified of its ineligibility.			family is notified of its ineligibility.																									
5-I.B	Foster children will be included in determining unit size.			<p>Children related to a household member by birth, adoption, or court awarded custody will be considered when determining unit size.</p> <p>Foster children will be included in determining unit size. The family may add foster children to the household as long as it does not overcrowd the unit based on Homes for Good’s occupancy standards.</p> <p>Children away at school, but for whom the unit is considered the primary residence, and children temporarily placed outside the home, will be considered when determining unit size.</p> <p>Children in the process of being adopted will be considered when determining unit size.</p> <p>Children who will live in the unit less than 50 percent of the time will not be considered when determining unit size.</p>			No	Added Clarity, based on new guidance about family composition.																					
5-I-B	<table border="1"> <thead> <tr> <th data-bbox="289 1162 470 1268">BEDROOM SIZE</th> <th data-bbox="474 1162 655 1268">MINIMUM NUMBER OF PERSONS</th> <th data-bbox="659 1162 865 1268">MAXIMUM NUMBER OF PERSONS</th> </tr> </thead> <tbody> <tr> <td data-bbox="289 1271 470 1328">0</td> <td data-bbox="474 1271 655 1328">1</td> <td data-bbox="659 1271 865 1328">1</td> </tr> <tr> <td data-bbox="289 1331 470 1377">1</td> <td data-bbox="474 1331 655 1377">1</td> <td data-bbox="659 1331 865 1377">2</td> </tr> <tr> <td data-bbox="289 1380 470 1425">2</td> <td data-bbox="474 1380 655 1425">2</td> <td data-bbox="659 1380 865 1425">4</td> </tr> </tbody> </table>			BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS	0	1	1	1	1	2	2	2	4	<table border="1"> <thead> <tr> <th data-bbox="898 1162 1079 1268">BEDROOM SIZE</th> <th data-bbox="1083 1162 1264 1268">MINIMUM NUMBER OF PERSONS</th> <th data-bbox="1268 1162 1449 1268">MAXIMUM NUMBER OF PERSONS</th> </tr> </thead> <tbody> <tr> <td data-bbox="898 1271 1079 1393">Small 1-Bedroom Units at Veneta Villa</td> <td data-bbox="1083 1271 1264 1393">1</td> <td data-bbox="1268 1271 1449 1393">2</td> </tr> <tr> <td data-bbox="898 1396 1079 1438">1</td> <td data-bbox="1083 1396 1264 1438">1</td> <td data-bbox="1268 1396 1449 1438">3</td> </tr> </tbody> </table>			BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS	Small 1-Bedroom Units at Veneta Villa	1	2	1	1	3	No	Added Clarity, compliance with guidance from Fair Housing Council of Oregon
BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS																											
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Section	Previous Policy	Proposed Policy	Required Change	Impact															
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5-II.C	Offers made by telephone will be confirmed by letter. Offers made by mail will be given three additional days.	Offers made solely by mail will be given three additional days for mailing time.	No	Added Clarity															
6-I.C	When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.	When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the date of receipt by Homes for Good.	No	Added Clarity															
6-III.D	Revised public housing maximum rents will be applied to a family's rent calculation at the first annual reexamination after the revision is adopted.	Revised public housing flat rents will be applied to a family's rent calculation at the first annual or interim reexamination after the revision is adopted.	No	Added Clarity															
6-II.E	The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.	The cost of animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.	No	Added Clarity															
7-I.B	Any documents used for verification must be the original or valid copy and generally must be dated within 60 days of the date they are provided to HACSA. The documents must not be damaged, altered or in any way illegible.	Any documents used for verification must be the original or valid copy and generally must be dated within 60 days of the date requested by Homes for Good. The documents must not be damaged, altered or in any way illegible.	No	Added Clarity															
7-II.C	Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and	Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify	No	Added Clarity															

Section	Previous Policy	Proposed Policy	Required Change	Impact
	<p>calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.</p>	<p>earned income, and to verify and calculate unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.</p>		
<p>7-II.H</p>	<p>HACSA will require verification of VAWA preference or the need for reasonable accommodation preference, for families residing in Section 8 properties managed by HACSA.</p> <p>Verification of VAWA may include, but not be limited to, any of the resources listed on form HUD-50066.</p> <p>Verification of need for reasonable accommodation will be pursuant to HACSA's reasonable accommodation policy.</p>	<p>Homes for Good offers a preference for victims of domestic violence, dating violence, sexual assault or stalking living in Section 8 properties managed by HACSA, (currently Abbie Lane, Fourteen Pines, and Village Oaks) or holding a Housing Choice Voucher issued by Homes for Good, whose situation requires moving out of the current unit – as described in Section 4-III.B. To verify that applicants qualify for the preference, Homes for Good will follow documentation requirements outlined in Section 16-VII.D.</p> <p>Homes for Good also offers a preference for persons with disabilities needing an accessible unit or a reasonable accommodation living in Section 8 properties managed by Homes for Good, or holding a Housing Choice Voucher issued by Homes for Good, who cannot be reasonably accommodated in those properties. To verify that applicants qualify for the preference, Homes for Good will follow documentation requirements outlined in Homes for Good's reasonable</p>	<p>No</p>	<p>Clarifies verification process for preferences.</p>

Section	Previous Policy	Proposed Policy	Required Change	Impact
		accommodation policy.		
8-I.A	PHAs must adopt smoke-free policies, which must be implemented no later than July 18 , 2018. A model policy is attached as Exhibit 8-1.	PHAs must adopt smoke-free policies, which must be implemented no later than July 30 , 2018. The policy is attached as Exhibit 8-1.	Yes	None.
8-I.D	If, for any reason, any member of the household ceases to reside in the unit, the lease may be amended by drawing a line through the person's name. The head of household and HACSA will be required to initial and date the change.	If, for any reason, any member of the household ceases to reside in the unit, the lease may be amended by drawing a line through the person's name, or by a lease amendment . The head of household and Homes for Good will be required to initial and date the change.	No	More consistent paperwork
8-I.D	If a new household member is a minor approved by HACSA to reside in the unit, the person's name and birth date will be added to the existing lease. The head of household and HACSA will be required to sign and date the change.	If a new household member is a minor approved by Homes for Good to reside in the unit, the person's name and birth date will be added to the existing lease through an amendment . The head of household, all adults , and Homes for Good will be required to sign and date the change. When a minor turns 18 the family will need to sign a new lease.	No	More consistent paperwork. Ensures new residents and household members who are turning 18 have seen and had a chance to read the lease.
8-I.E	If the resident transfers to another unit, HACSA will transfer the security deposit to the new unit. If the security deposit in the new unit is higher, the tenant will be required to pay the difference between the "old" and "new" unit. The tenant will be billed for any maintenance or other charges due for the "old" unit.	If the resident transfers to another unit, Homes for Good will transfer the security deposit to the new unit, including transfers due to RAD . If the security deposit in the new unit is higher, the tenant will be required to pay the difference between the "old" and "new" unit. The tenant will be billed for any maintenance or other charges due for the "old" unit.	No	Added clarity
8-I.F	-N/A-	Homes for Good may grant requests for relief from surcharges from excess utility consumption of Homes for Good-furnished	No	None at this time – because Homes for Good does not charge

Section	Previous Policy	Proposed Policy	Required Change	Impact
		<p>utilities as a reasonable accommodation where Homes for Good deems an exception is appropriate to meet the needs of elderly, ill, or disabled residents. In determining whether to grant this request, Homes for Good will consider special factors affecting utility usage that are not within the control of the resident, such as the need for medical equipment. Residents may request relief in accordance with Section 2-II.C. of this ACOP. Homes for Good will process such requests in accordance with Section 2-II.E. of this ACOP.</p> <p>Notice of the availability of procedures for requesting relief (including the Homes for Good representative with whom initial contact may be made by the resident) and the Homes for Good criteria for granting requests, will be included in each notice to residents of changes in utility allowances or surcharges as well as to new residents as part of the lease orientation.</p>		<p>for excess utilities. This change is recommended by Nan McKay.</p>
8-II.B	HACSA will inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS).	Homes for Good or a contractor will inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS).	No	Added clarity
8-II.C	Entry for repairs requested by the family will not require prior notice. Resident-requested repairs presume permission for HACSA to enter the unit.	Entry for repairs requested by the family will not require prior notice. Resident-requested repairs presume permission for Homes for Good to enter the unit within 7 days from the date of request.	No	Added clarity

Section	Previous Policy	Proposed Policy	Required Change	Impact
8-II.C	If no one is at home, the inspector will enter the unit, conduct the inspection and leave the resident a copy of the inspection report.	If no one is at home for the preventative maintenance inspection , the inspector will enter the unit, conduct the inspection and leave the resident a copy of the inspection report. For other entries when a resident is not home, Homes for Good will leave a notice of the date, time, and purpose of entry.	No	Added clarity
9-III.C	HACSA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's rent will change as a result of the increase.	Homes for Good will conduct an interim reexamination if the change is from a new source of income, or if the family has received an interim reexamination since their last annual that resulted in a decrease in rent. Homes for Good will also conduct interim reexaminations for families that qualify for the earned income disallowance (EID), but only when the EID family's rent will change as a result of the increase.	No	Returns to a policy of completing interims that increase rent
9-III.C	If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, HACSA will note the information in the tenant file, but will not conduct an interim reexamination unless the family requests an interim to increase rent. An example would be an FSS participant whose increases in rent are deposited into his or her FSS escrow account.	If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, Homes for Good will conduct an interim reexamination if the change is from a new source of income, or if the family has received an interim reexamination since their last annual that resulted in a decrease in rent. Otherwise, Homes for Good will note the information in the tenant file, but will not conduct an interim reexamination unless the family requests an interim to increase rent. An example would be an FSS participant whose increases in rent are	No	Returns to a policy of completing interims that increase rent.

Section	Previous Policy	Proposed Policy	Required Change	Impact
		deposited into his or her FSS escrow account.		
10-II.B.	Pet authorization will be renewed annually and will be coordinated with the annual reexamination date.	-N/A-	No	Reduced paperwork burden
10-II.B.	Residents who have been approved to have a pet must enter into a pet agreement with HACSA, or the approval of the pet will be withdrawn.	Residents who have been approved to have a pet must enter into a pet agreement with Homes for Good prior to bringing the pet onto the premises , or the approval of the pet will be withdrawn.	No	Added clarity
10-II.C	-N/A-	PHAs may not require pet owners to obtain or carry liability insurance. PHAs may not require that cats be declawed.	Yes	Compliance with new guidance
10-II.D	The following animals are not considered common household pets: Reptiles Insects Arachnids Wild animals or feral animals Pot-bellied pigs Animals used for commercial breeding	The following animals are not considered common household pets: Reptiles Insects Arachnids Wild animals or feral animals Pot-bellied pigs Ferrets Hedgehogs Sugar Gliders Animals used for commercial breeding	No	Added Clarity
10-II.D	Pets must be licensed in accordance with state or local law. Residents must provide proof of licensing at the time of registration and annually, in conjunction with the resident's	Pets must be licensed in accordance with state or local law. Residents must provide proof of licensing at the time of registration.	No	Reduced paperwork burden

Section	Previous Policy	Proposed Policy	Required Change	Impact
	annual reexamination.			
10-II.D	Residents are not permitted to exercise pets or permit pets to deposit waste on project premises outside of the areas designated for such purposes.	-N/A-	No	Added clarity; there are no designated pet areas.
10-II.D	The designated responsible party must not be another resident of HACSA-managed housing.	The designated responsible party must not be another resident of Homes for Good-managed housing. The responsible party's information will be updated at the time of the annual recertification.	No	Added Clarity
10-II.D	Pets that are not owned by a resident are not allowed on the premises. Residents are prohibited from feeding or harboring stray animals or wildlife.	Pets that are not owned by a resident are not allowed on the premises. Residents are prohibited from feeding or harboring stray animals or wildlife. Residents may however have bird feeders.	No	Added clarity
11-I.C	Approximately 60 days prior to the end of the lease term, HACSA will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement.	As the part of the annual recertification process, Homes for Good will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement.	No	Added Clarity
12-I.B	For instances of domestic violence, dating violence, sexual assault, or stalking, the threat may be established through documentation outlined in section 16-VII.D, or by any proof accepted by the PHA. The PHA will immediately process requests for transfers due to domestic violence, dating violence, sexual assault, or stalking. The PHA will	For instances of domestic violence, dating violence, sexual assault, or stalking, the threat may be established through documentation outlined in section 16-VII.D. In order to request the emergency transfer, the requestor must submit an emergency transfer request form (HUD-5383) (Exhibit 16-4 of this ACOP), although, Homes for Good may waive this requirement in order	Yes	Compliance with new VAWA guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
	allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available.	<p>to expedite the transfer process.</p> <p>Homes for Good will immediately process requests for transfers due to domestic violence, dating violence, sexual assault, or stalking. Homes for Good will allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available. Homes for Good defines immediately available as a vacant unit, that is ready for move-in within a reasonable period of time, not to exceed 60 days.</p>		
12-I.C	-N/A-	<p>If the emergency transfer is necessary to protect a victim of domestic violence, dating violence, sexual assault, or stalking, Homes for Good will follow procedures outlined in Exhibit 16-4.</p>	Yes	Compliance with new VAWA guidance
12-III.C	<p>Exceptions to the good record requirement may be made when it is to HACSA's advantage to make the transfer.</p> <p>Exceptions may also be made when HACSA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, sexual assault, or stalking and who provides documentation of abuse in accordance with section 16-VII.D of this ACOP.</p>	<p>Exceptions to the good record requirement may be made when it is to Homes for Good's advantage to make the transfer.</p> <p>Exceptions will also be made when Homes for Good determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, sexual assault, or stalking and who provides documentation of abuse in accordance with section 16-VII.D of this ACOP. Tenants who are not in good standing may still request an emergency transfer under VAWA.</p>	Yes	Compliance with new VAWA guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
12-III.F	-N/A-	<p>In order to request the emergency transfer under VAWA, the resident will be required to submit an emergency transfer request form (HUD-5383) (Exhibit 16-4 of this ACOP). Homes for Good may, on a case-by-case basis, waive this requirement and accept a verbal request in order to expedite the transfer process. If Homes for Good accepts an individual’s statement, Homes for Good will document acceptance of the statement in the individual’s file in accordance with 16-VII.D. of this ACOP. Transfer requests under VAWA will be processed in accordance with the Homes for Good Emergency Transfer Plan (Exhibit 16-3).</p>	Yes	Compliance with new VAWA guidance
12-IV.B.	<p>Transfers will be processed in the following order:</p> <p>1. Emergency transfers (hazardous maintenance conditions)</p>	<p>Transfers will be processed in the following order:</p> <p>1. Emergency transfers (hazardous maintenance conditions, VAWA)</p>	Yes	Compliance with new VAWA guidance
13-III.F.	<p>VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence,</p>	<p>VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant on the basis or as a direct result of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic</p>	Yes	Compliance with new VAWA guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
	dating violence, sexual assault, or stalking [FR Notice 8/6/13].	violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].		
13-III.F	-N/A-	In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators.	Yes	Compliance with new VAWA guidance
13-III.F	<p>In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:</p> <p>Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking</p> <p>Whether the threat is a physical danger beyond a speculative threat</p> <p>Whether the threat is likely to happen within a short period of time</p>	<p>In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:</p> <p>Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking</p> <p>Whether the threat is a physical danger beyond a speculative threat</p> <p>Whether the threat is likely to happen within an immediate time frame</p>	Yes	Compliance with new VAWA guidance
13-III.F	-N/A-	However, perpetrators should be given no more than 30 days' notice of termination in most cases. The PHA must not initiate eviction procedures against ineligible remaining family members until 30 days after the lease bifurcation [Notice PIH	Yes	Compliance with new VAWA guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
		2017-08].		
13-IV.D	All notices of lease termination will include information about the protection against termination provided by the Violence against Women Reauthorization Act of 2013 (VAWA) for victims of domestic violence, dating violence, sexual assault, or stalking (see section 16 VII.C). The PHA will also include a copy of the form HUD-5382 and a notice of VAWA rights to accompany the termination notice. Any tenant who claims that the cause for termination involves (a) criminal acts of physical violence against family members or others or (b) incidents of domestic violence, dating violence, sexual assault, or stalking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13 III.F and 16-VII.D.	All notices of lease termination will include a copy of the forms HUD-5382 and HUD-5380 to accompany the termination notice. Any tenant who claims that the cause for termination involves domestic violence, dating violence, sexual assault, or stalking of which the tenant or affiliated individual of the tenant is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13 III.F and 16-VII.D.	Yes	Compliance with new VAWA guidance
14 – cost of copying	cost of \$5.00 initially and \$.05 per page.	cost of \$.25 per page	No	Simplified policy, aligns with Section 8
14-II.A	HACSA will conduct any recording of the informal hearing.	If the family chooses to record the hearing, HACSA will also record the hearing.	No	Added Clarity
14-III.D	HACSA will accept requests for an informal settlement of a grievance either orally or in writing, to the HACSA office within 5 working days of the HACSA nonpayment of rent notice, 5 working days for lease termination notice, and	HACSA will accept requests for an informal settlement of a grievance either orally or in writing, to the HACSA office within 5 working days of the HACSA nonpayment of rent notice, 5 working days (or prior to the termination	No	Added Clarity

Section	Previous Policy	Proposed Policy	Required Change	Impact
	14 calendar days for any other grievance .	date) for lease termination notice, and 14 calendar days for any other grievable event .		
14-III.G	If the complainant would like HACSA to record the proceedings by audiotape, the request must be made to HACSA by 12:00 p.m. on the business day prior to the hearing. HACSA will record the proceedings.	If the complainant would like HACSA to record the proceedings by audiotape, the request must be made to HACSA by 12:00 p.m. on the business day prior to the hearing. HACSA will record the proceedings if the complainant records .	No	Added Clarity
16-II.B	Alternatively, the PHA may set flat rents at no less than 80 percent of the applicable small area FMR (SAFMR) for metropolitan areas, or 80 percent of the applicable unadjusted rents for nonmetropolitan areas.	Alternatively, the PHA may set flat rents at no less than 80 percent of the applicable small area FMR (SAFMR) for metropolitan areas, or 100 percent of the applicable unadjusted rents for nonmetropolitan areas.	Yes	Compliance with new Flat Rent guidance
16-II.B	The 2015 Appropriations Act permits PHAs to request an exception flat rent that is lower than either 80 percent of the FMR or SAFMR/unadjusted rent if the PHA can demonstrate that these FMRs do not reflect the market value of a particular property or unit.	The 2015 Appropriations Act permits PHAs to request an exception flat rent that is lower than either 80 percent of the FMR or SAFMR or 100 percent of the unadjusted rent if the PHA can demonstrate that these FMRs do not reflect the market value of a particular property or unit.	Yes	Compliance with new Flat Rent guidance
16-II.B	In determining flat rents, PHAs must consider the following: <ul style="list-style-type: none"> • Location • Quality • Unit size • Unit type • Age of property • Amenities at the property and in immediate neighborhood • Housing services provided 	In determining flat rents, PHAs must consider the following: <ul style="list-style-type: none"> • Location • Quality • Unit size • Unit type • Age of the unit • Amenities at the property and in immediate neighborhood • Housing services provided 	Yes	Compliance with new Flat Rent Guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
	<ul style="list-style-type: none"> Maintenance provided by the PHA Utilities provided by the PHA 	<ul style="list-style-type: none"> Maintenance provided by the PHA Utilities provided by the PHA and/or landlord for (comparable units in the market study) The PHA must provide a corresponding key explaining the calculations used for determining the valuation for each factor. 		
16-II.B	<p>PHAs must receive written HUD approval before implementing exception flat rents. PHAs that use exception flat rents must conduct a new market analysis, and obtain HUD approval, annually.</p> <p>PHAs are now required to apply a utility allowance to flat rents. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.</p>	<p>PHAs must receive written HUD approval before implementing exception flat rents. PHAs with a previously approved flat rent exception request may submit a written request to extend the approved flat rents for up to two additional years, provided local market conditions remain unchanged. Detailed information on how to request exception flat rents can be found in Notice PIH 2017-23.</p> <p>PHAs are now required to apply a utility allowance to flat rents as necessary. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.</p>	Yes	Compliance with new Flat Rent guidance
16-II.B	<p>No later than 90 days after HUD publishes new annual FMRs/SAFMRs/unadjusted rent, PHAs must revise flat rents as necessary based changes to the FMR/SAFMR/unadjusted rent. The PHA must offer changes to the flat rent to all new admissions and to existing families at the next annual rent option.</p> <p>If</p>	<p>No later than 90 days after the effective date of the new annual FMRs/SAFMRs/unadjusted rent, PHAs must implement new flat rents as necessary based changes to the FMR/SAFMR/unadjusted rent or request an exception.</p>	Yes	Compliance with new Flat Rent guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
16-V.B	-N/A-	The PHA must keep confidential records of all emergency transfer requested under the PHA’s Emergency Transfer Plan, and the outcomes of such requests, and retain the records for a period of three years, or for a period of time as specific in program regulations [24 CFR 5.2002(e)(12)].	Yes	Compliance with new VAWA guidance
16-V.B	During the term of each public housing tenancy, and for at least four years thereafter, the PHA will keep all documents related to a family’s eligibility, tenancy, and termination.	The PHA will keep the last three years of the Form HUD-50058 and supporting documentation, and for at least three years after end of participation all documents related to a family’s eligibility, tenancy, and termination.	Yes	Compliance with new record-retention guidance
16-V.B	In addition, the PHA will keep the following records for at least four years: <ul style="list-style-type: none"> • An application from each ineligible family and notice that the applicant is not eligible • Lead-based paint records as required by 24 CFR 35, Subpart B • Documentation supporting the establishment of flat rents and the public housing maximum rent • Documentation supporting the establishment of utility allowances and surcharges • Documentation related to PHAS • Accounts and other records supporting PHA budget and financial statements for the program 	In addition, the PHA will keep the following records for at least three years: <ul style="list-style-type: none"> • An application from each ineligible family and notice that the applicant is not eligible • Lead-based paint records as required by 24 CFR 35, Subpart B • Documentation supporting the establishment of flat rents • Documentation supporting the establishment of utility allowances and surcharges • Documentation related to PHAS • Accounts and other records supporting PHA budget and financial statements for the program • Complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final 	Yes	Compliance with new record-retention guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
	<ul style="list-style-type: none"> Complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule Other records as determined by the PHA or as required by HUD 	<p>rule</p> <ul style="list-style-type: none"> Confidential records of all emergency transfers related to VAWA requested under the PHA’s Emergency Transfer Plan and the outcomes of such requests Other records as determined by the PHA or as required by HUD 		
16-VI	Environmental Intervention Blood Lead Level	Elevated Blood Lead Level (EBLL)	Yes	Compliance with new Lead guidance
16-VI.A	HACSA will provide written notice of each known case of a child with an EBLL to the HUD field office within five business days of receiving the information.	Homes for Good will provide written notice of each known case of a child with an EBLL to the HUD field office, and to HUD’s Office of Lead Hazard Control (OLHCHH) , within five business days of receiving the information.	Yes	Compliance with new Lead guidance
16-VII.C	Whenever HACSA has reason to suspect that providing information about VAWA to a public housing tenant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim.	Whenever Homes for Good has reason to suspect that providing information about VAWA to a public housing tenant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, Homes for Good may decide not to send mail regarding VAWA protections to the victim’s unit if Homes for Good believes the perpetrator may have access to the victim’s mail, unless requested by the victim. When discussing VAWA with the victim,	No	Compliance with new VAWA guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
		<p>Homes for Good will take reasonable precautions to ensure that no one can overhear the conversation such as having conversations in a private room.</p> <p>The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.</p>		
16-VII.D	<p>The individual may satisfy the PHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:</p> <p>(1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim.</p>	<p>The individual may satisfy the PHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:</p> <p>(1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.</p>	Yes	Compliance with new VAWA guidance
16-VII.D	<p>HACSA may, at its discretion, extend the deadline for an additional 14 calendar days. If an extension is granted, HACSA will provide the extension in writing.</p>	<p>Homes for Good may, at its discretion, extend the deadline for an additional 14 calendar days. In determining whether to extend the deadline, Homes for Good will consider factors that may contribute to the victim's inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to</p>	Yes	Compliance with new VAWA guidance

Section	Previous Policy	Proposed Policy	Required Change	Impact
		<p>address health or safety issues. If an extension is granted, Homes for Good will provide the extension in writing.</p> <p>Once the victim provides documentation, Homes for Good will acknowledge receipt of the documentation within 14 calendar days.</p>		
16-VII.D	<p>In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA must honor any court orders issued to protect the victim or to address the distribution of property.</p>	<p>In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. The PHA must honor any court orders issued to protect the victim or to address the distribution of property. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].</p>	Yes	Compliance with new VAWA guidance
16-VII.D	-N/A-	When requesting third-party documents,	Yes	Compliance with new

Section	Previous Policy	Proposed Policy	Required Change	Impact
		<p>the PHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.</p> <p>If the PHA does not receive third-party documentation within the required timeframe (and any extensions) the PHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the PHA will hold separate hearings for the applicants or tenants.</p>		VAWA guidance
16-VII.D	The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b)..	The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.	Yes	Compliance with new VAWA guidance
16-VII.D	If HACSA may accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault, or stalking, HACSA will document acceptance of the statement or evidence in the individual's file.	If Homes for Good accepts an individual's statement or other corroborating evidence (as provided by the victim) of domestic violence, dating violence, sexual assault, or stalking, Homes for Good will document acceptance of the statement or evidence in the individual's file.	No	Correct typo and provide added clarity

The Register-Guard

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Notice of 45 Day Comment Period and Public Hearing for the Homes for Good Annual PHA Plan in Lane County Oregon

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Location: Lane County Oregon

Category: Events and Notices - Legal and Public Notices

Posted: 05/11/2018

Contact: (541)682-2565

[Email Seller](#)

Details

Homes for Good Housing Agency

Annual Agency Plan

Notice of 45 day Comment Period and Public Hearing

The Homes for Good Housing Agency has updated its Agency Annual Plan. The Agency Plan guides the planning and implementation of federal programs under the jurisdiction of the Department of Housing and Urban Development for the period beginning October 1, 2018. The federal programs related to housing and other needs for low-income persons covered by the Agency Plan include, but are not limited to, Capital Fund, Section 8 and Public Housing Admission policies, Self Sufficiency, and Resident participation.

The public examination and comment period for the Agency Plan begins Friday, April 27, 2018 and ends Monday, June 11, 2018. There will be a public hearing on May 23, 2018 at 2:30 p.m. in the Board of County Commissioners Conference Room, in the County Public Service Building at 125 East 8th Avenue, Eugene, OR, 97401. Comments may be presented in person during this meeting, or in writing as noted below. The draft plan and all supporting documents may be viewed at the following locations.

Homes for Good Administrative Office

Homes for Good Administrative Office

Classified Categories

[Autos: For Sale or Lease](#)
[Autos: Services & Parts](#)
[Business Center](#)
[Entertainment](#)
[Events & Notices](#)
[Garage, Auction, Estate, and Yard Sales](#)
[Industrial Products & Supplies](#)
[Jobs: Listings & Resumes](#)
[Legal Notices](#)
[Lost & Found](#)
[Merchandise](#)
[Obituaries](#)
[Cemetery Lots](#)
[Office Equipment & Supplies](#)
[Pets & Animals](#)
[Real Estate · Rentals](#)
[Recreation Vehicles](#)
[Schools & Instruction](#)
[Services & Professionals](#)
[Travel & Lodging](#)

177 Day Island Road

300 West Fairview Drive

Eugene Oregon 97401

Springfield OR 97477

If you have any questions regarding the Plan or would like to submit any written comments, please contact Wesley Lucas, Division Analyst; at 300 West Fairview Drive, Springfield OR 9747; email wlucas@homesforgood.org; or call (541) 682-2565.

If you are in need of a reasonable accommodation in regard to this meeting, please call (541) 682-2565 at least 24 hours prior to the meeting time.

The Agency is an equal opportunity employer and complies with State and Federal laws and regulations relating to the 1973 Rehabilitation Act, Section 504, and the 1990 Americans with Disabilities Act (ADA) and the 2009 ADA Amendments Act (ADAAA). Homes for Good does not discriminate on the basis of disability status in the admission or access to its federally assisted programs or activities.

[Back to Results](#)

Listing 37 of 55

Contact Seller

* required information

* First Name:

* Last Name:

* E-mail Address

Comments:

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**Certification by State or Local
Official of PHA Plans Consistency
with the Consolidated Plan or
State Consolidated Plan
(All PHAs)**

U. S Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 2/29/2016

**Certification by State or Local Official of PHA Plans
Consistency with the Consolidated Plan or State Consolidated Plan**

I, Jon R. Ruiz, the City Manager
Official's Name *Official's Title*

certify that the 5-Year PHA Plan and/or Annual PHA Plan of the

Homes for Good Housing Agency
PHA Name

is consistent with the Consolidated Plan or State Consolidated Plan and the Analysis of
Impediments (AI) to Fair Housing Choice of the

City of Eugene
Local Jurisdiction Name

pursuant to 24 CFR Part 91.

Provide a description of how the PHA Plan is consistent with the Consolidated Plan or State
Consolidated Plan and the AI.

The 2019 PHA Plan preserves affordable housing in a way that is consistent with the goals of the
2015-2019 Eugene-Springfield Consolidated Plan.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Jon R. Ruiz

Signature



Title

City Manager

Date

6/3/18

**Certifications of Compliance with
PHA Plans and Related Regulations
(Standard, Troubled, HCV-Only, and
High Performer PHAs)**

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB No. 2577-0226
Expires 02/29/2016

**PHA Certifications of Compliance with the PHA Plan and Related Regulations including
Required Civil Rights Certifications**

Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairman or other authorized PHA official if there is no Board of Commissioners, I approve the submission of the ___ 5-Year and/or ___ Annual PHA Plan for the PHA fiscal year beginning _____, hereinafter referred to as "the Plan", of which this document is a part and make the following certifications and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the Plan and implementation thereof:

1. The Plan is consistent with the applicable comprehensive housing affordability strategy (or any plan incorporating such strategy) for the jurisdiction in which the PHA is located.
2. The Plan contains a certification by the appropriate State or local officials that the Plan is consistent with the applicable Consolidated Plan, which includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice, for the PHA's jurisdiction and a description of the manner in which the PHA Plan is consistent with the applicable Consolidated Plan.
3. The PHA has established a Resident Advisory Board or Boards, the membership of which represents the residents assisted by the PHA, consulted with this Resident Advisory Board or Boards in developing the Plan, including any changes or revisions to the policies and programs identified in the Plan before they were implemented, and considered the recommendations of the RAB (24 CFR 903.13). The PHA has included in the Plan submission a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the Plan addresses these recommendations.
4. The PHA made the proposed Plan and all information relevant to the public hearing available for public inspection at least 45 days before the hearing, published a notice that a hearing would be held and conducted a hearing to discuss the Plan and invited public comment.
5. The PHA certifies that it will carry out the Plan in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990.
6. The PHA will affirmatively further fair housing by examining their programs or proposed programs, identifying any impediments to fair housing choice within those programs, addressing those impediments in a reasonable fashion in view of the resources available and work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and by maintaining records reflecting these analyses and actions.
7. For PHA Plans that includes a policy for site based waiting lists:
 - The PHA regularly submits required data to HUD's 50058 PIC/IMS Module in an accurate, complete and timely manner (as specified in PIH Notice 2010-25);
 - The system of site-based waiting lists provides for full disclosure to each applicant in the selection of the development in which to reside, including basic information about available sites; and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types at each site;
 - Adoption of a site-based waiting list would not violate any court order or settlement agreement or be inconsistent with a pending complaint brought by HUD;
 - The PHA shall take reasonable measures to assure that such a waiting list is consistent with affirmatively furthering fair housing;
 - The PHA provides for review of its site-based waiting list policy to determine if it is consistent with civil rights laws and certifications, as specified in 24 CFR part 903.7(c)(1).
8. The PHA will comply with the prohibitions against discrimination on the basis of age pursuant to the Age Discrimination Act of 1975.
9. The PHA will comply with the Architectural Barriers Act of 1968 and 24 CFR Part 41, Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped.
10. The PHA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, Employment Opportunities for Low-or Very-Low Income Persons, and with its implementing regulation at 24 CFR Part 135.
11. The PHA will comply with acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR Part 24 as applicable.

12. The PHA will take appropriate affirmative action to award contracts to minority and women's business enterprises under 24 CFR 5.105(a).
13. The PHA will provide the responsible entity or HUD any documentation that the responsible entity or HUD needs to carry out its review under the National Environmental Policy Act and other related authorities in accordance with 24 CFR Part 58 or Part 50, respectively.
14. With respect to public housing the PHA will comply with Davis-Bacon or HUD determined wage rate requirements under Section 12 of the United States Housing Act of 1937 and the Contract Work Hours and Safety Standards Act.
15. The PHA will keep records in accordance with 24 CFR 85.20 and facilitate an effective audit to determine compliance with program requirements.
16. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35.
17. The PHA will comply with the policies, guidelines, and requirements of OMB Circular No. A-87 (Cost Principles for State, Local and Indian Tribal Governments), 2 CFR Part 225, and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments).
18. The PHA will undertake only activities and programs covered by the Plan in a manner consistent with its Plan and will utilize covered grant funds only for activities that are approvable under the regulations and included in its Plan.
19. All attachments to the Plan have been and will continue to be available at all times and all locations that the PHA Plan is available for public inspection. All required supporting documents have been made available for public inspection along with the Plan and additional requirements at the primary business office of the PHA and at all other times and locations identified by the PHA in its PHA Plan and will continue to be made available at least at the primary business office of the PHA.
22. The PHA certifies that it is in compliance with applicable Federal statutory and regulatory requirements, including the Declaration of Trust(s).

PHA Name

PHA Number/HA Code

_____ Annual PHA Plan for Fiscal Year 20_____

_____ 5-Year PHA Plan for Fiscal Years 20_____ - 20_____

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Name of Authorized Official

Title

Signature

Date



AGENDA CHECKLIST

AGENDA INFORMATION TO BE SUBMITTED TO THE BOARD OFFICE
 (Aisha McCoy, Administrative Specialist ext 2525)

AGENDA TITLE: In the Matter of Approving the Submission of the Five Year Capital Fund Action Plan 2018-2022

One Title Memo

Agenda Packet
 One Original Hard Copy plus
 One copy e-mailed to
amccoy@homesforgood.org

Material Due
 Due by 12 pm Wednesday
 preceding the week it will be
included in the agenda notice

DEPARTMENT	Real Estate Development		
CONTACT	Kurt von der Ehe	EXT	2568
PRESENTER	Jared Young	EXT	3432

AGENDA DATE: **06/27/2018**

THIS ITEM WILL INVOLVE:

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Consent Calendar | <input type="checkbox"/> Report | <input type="checkbox"/> Appointments | <input type="checkbox"/> Committee Reports |
| <input checked="" type="checkbox"/> ORDER/Resolution | <input type="checkbox"/> Discussion & Action | <input type="checkbox"/> Discussion Only | |
| <input type="checkbox"/> Ordinance/Public Hearing | <input type="checkbox"/> Presentation | | |
| Public Comment Anticipated? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Estimated Time ___10 min___ | |

NOTE: DEPARTMENT MANAGER MUST SIGN OFF BEFORE SUBMITTING TO BOARD OFFICE

Executive Director/: **Jacob Fox** Date **06/19/2018**

Deputy Director _____

Legal Staff-Review by: _____ Date _____

*if required _____

Management Staff- _____ Date _____

Review by: _____



177 Day Island Rd., Eugene, OR 97401 • PH 541-682-3755 • FAX 541-682-3411
300 West Fairview Dr., Springfield, OR 97477 • PH 541-682-4090 • FAX 541-682-3875



Homes. People. Partnerships. Good. www.homesforgood.org

HOMES FOR GOOD MEMORANDUM

TO: Homes for Good Board of Commissioners

FROM: Jacob Fox, Executive Director

AGENDA ITEM TITLE: In the Matter of Approving the Submission of the Five Year Capital Fund Action Plan 2018-2022

AGENDA DATE: June 27, 2018

I MOTION

It is moved that the order/resolution be adopted approving the submission of the Five Year Capital Fund Action Plan 2018-022.

II ISSUE

Capital Fund Program Five Year Action plan requires Board approval and certification that the Agency has complied with the applicable requirements listed on the certification form.

III DISCUSSION

A. Background/Analysis

The Agency is required by Section 511 of the Quality Housing and Work Responsibility Act of 1998 (and ensuing HUD requirements) to submit a Capital Fund Program, Five Year Action Plan to HUD.

The Agency is submitting the Capital Fund Program Five Year Action Plan. The focus of the plan is to identify and provide routine maintenance, along with minor modifications, of Public Housing units. The Work Responsibility Act requires that housing authorities work with their Public Housing Resident Advisory Boards (RAB) on the planning and development of the Plans. In order to meet this requirement, the Agency met with the RAB on June 14, 2018. The RAB was presented with various components of the Plan at this meeting.

The Act also requires that the Agency's Capital Fund Plan is consistent with the Consolidated Plan (an inter-jurisdictional effort designed to address the needs of the community). The Agency's plan coordinates and addresses many of the needs outlined in the Consolidated Plan, such as, increasing affordable rental housing, conserving and improving existing affordable housing, and increasing homeownership opportunities.

HUD requires that housing authorities provide public notice of a 45-day comment period and a public hearing on the proposed plan. The Agency has met this requirement through public advertisement, resident meetings, and a public hearing. Throughout the comment period, the Plan and supporting documents have been available for public viewing at both Agency administration buildings and at each Public Housing development site. A public hearing was held at the end of the public comment period on June 13, 2018, no questions or comments were received regarding the Five Year Capital Fund Action Plan 2018-2022.

The Agency is required to submit the Capital Fund Program Five Year Action Plan to HUD for approval prior to initiating projects included in the plan. Along with the electronic submission, the Agency is required to submit to HUD the Board certification in a HUD prescribed format.

B. Recommendation

In order to receive subsequent HUD funding, the Agency must submit the Board approved Capital Fund Program Five Year Action Plan and the related certifications.

IV IMPLEMENTATION/FOLLOW-UP

Upon approval by the Board, the Executive Director will submit the ORDER/Resolution of the Capital Fund 5-Year Plan to HUD.

V ATTACHMENTS

1. A copy of the Capital Fund Program Five Year Action Plan 2018-2022 is attached.
2. A copy of the Public Comment advertisement is attached.

IN THE BOARD OF COMMISSIONERS OF THE
HOMES FOR GOOD HOUSING AGENCY, OF LANE COUNTY OREGON

ORDER 18-27-06-03H

In the Matter of Approving the Submission of
the Five Year Capital Fund Action Plan
2018-2022

WHEREAS, it is necessary for the Board to approve the submission of the Five Year capital Fund Action Plan 2018-2022 for Homes for Good Housing Agency; and

WHEREAS, a public hear to receive comments on the Five Year Capital Fund Action Plan 2018-2022 was held on June 13, 2018; and

WHEREAS, Homes for Good Housing Agency Executive Director has recommended approval of the proposed Five Year Capital Fund Action Plan 2018-2022; and

WHEREAS, the Board having fully considered the executive Director's recommendation,

NOW IT IS THEREFORE ORDERED THAT:

The Board authorizes the submission of the Five Year Capital Fund Action Plan 2018-2022.

DATED this _____ day of _____, 2018

Chair, Homes for Good Board of Commissioners

GATEHOUSE MEDIA

3500 CHAD DRIVE, SUITE 600, EUGENE, OREGON 97408
PHONE (541) 485-1234

Legal Notice 7228751

Legal Notice Advertising

HOMES FOR GOOD HOUSING AGENCY
JARED YOUNG
300 W FAIRVIEW DR
SPRINGFIELD, OR 97477

FV MAIL

MAY 03 2018

HOMES FOR GOOD

#

AFFIDAVIT OF PUBLICATION

STATE OF OREGON, }
COUNTY OF LANE, } ss.

I, **Wendy Raz**, being first duly affirmed, depose and say that I am the Advertising Manager, or the principal clerk, of The Register-Guard, a newspaper of general circulation as defined in ORS 193.010 and 193.020; published at Eugene in the aforesaid county and state; that the **Public Notice** printed copy of which is hereto annexed, is publishing in the entire issue of said newspaper for **one** successive and consecutive **Day(s)** in the following issues:

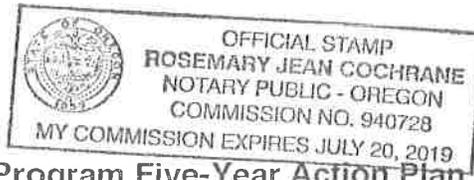
April 29, 2018

Homes for Good Housing Agency
177 DAY ISLAND ROAD
EUGENE, OREGON 97401
Capital Fund Program Five-Year Action Plan (2018-2022)
Notice of 45 Day Comment Period and Public Hearing
Homes for Good Housing Agency will be submitting its Capital Fund Program Five-Year Action Plan
The public examination and comment period for the Capital Fund 5 Year Plan begins Sunday, April 29, 2018 and ends Wednesday, June 13, 2018, with a public hearing at 9:30 AM in the Community Room at Homes for Good Housing Agency, 300 W. Fairview, Springfield. The Capital Fund Five-Year Action Plan and all supporting documents may be viewed at the following locations:
Homes for Good Housing Agency Administrative Office
177 Day Island Road
Eugene Oregon 97401
Homes for Good Housing Agency Administrative Office
300 West Fairview Drive
Springfield OR 97477
Written comments may be submitted to Jared Young, Contract Administrator, Homes for Good Housing Agency, 300 W Fairview Drive, Springfield OR 97477.
If you have any questions regarding the Capital Fund 5 Year Plan, please contact Jared Young at (541) 682-3432.
If you are in need of a reasonable accommodation in regard to this meeting, please call Teresa Hashagen at (541) 682-2562 at least 24 hours prior to the meeting time.
The Agency is an equal opportunity employer and complies with State and Federal laws and regulations relating to the 1973 Rehabilitation Act, Section 504, and the 1990 Americans with Disabilities Act (ADA) and the 2009 Americans with Disabilities Act Amendment (ADAA). Homes for Good Housing Agency does not discriminate on the basis of disability status in the admission or access to its federally assisted programs or activities.
No. 7228751 - April 29, 2018

Wendy Raz

Subscribed and affirmed to before me this **April 30, 2018**

Rosemary Jean Cochrane
Notary Public of Oregon



Account #: **1000419**
INVOICE **7228751**
Case: **Capital Fund Program Five-Year Action Plan**
Ad Price: **\$145.0**

HOMES FOR GOOD HOUSING AGENCY
 CAPITAL FUND 5-YEAR ACTION PLAN
 FY18-FY22



WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 100 LAURELWOOD (29 UNITS)					
Roofs		\$61,000.00			
Interior/Exterior Comp Mod				\$100,000.00	
Appliances and Heaters				\$30,000.00	
Kitchen Upgrades					\$11,600.00
Bath Upgrades					\$11,600.00
Windows (4-bedroom units)				\$40,000.00	
Walks, Slabs, & Driveways	\$50,000.00			\$40,000.00	
Parking lot					\$10,000.00
AMP 100 LAURELWOOD SUB TOTAL	\$50,000.00	\$61,000.00	\$0.00	\$210,000.00	\$33,200.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 200 MCKENZIE VILLAGE (172 UNITS)					
Roofs	\$185,000.00	\$185,000.00			
Kitchen Upgrades			\$140,000.00	\$200,000.00	
Bath Upgrades					\$68,800.00
Plumbing and Storm Drain	\$43,000.00		\$30,000.00	\$40,000.00	\$28,994.00
Asbestos Flooring Abatement/Replacement		\$13,000.00	\$23,000.00	\$20,000.00	
AMP 200 MCKENZIE VILLAGE SUB TOTAL	\$228,000.00	\$198,000.00	\$193,000.00	\$260,000.00	\$97,794.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 200 PENGRA COURT (22 UNITS)					
Siding/Windows/Paint	\$201,199.00	\$225,000.00			
Bath Upgrades					\$8,800.00
Kitchen remodel				\$80,000.00	
Roof/gutters	\$101,000.00				
AMP 200 PENGRA COURT SUB TOTAL	\$302,199.00	\$225,000.00	\$0.00	\$80,000.00	\$8,800.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 300 MAPLEWOOD MEADOWS (38 UNITS)					
ADA Kitchen Remodel- 2 units	\$50,000.00				
Siding and Windows (4 bldgs - 6 bldgs per year)	\$190,000.00	\$275,951.00	\$130,000.00		
Kitchen Upgrades					\$15,200.00
Bath Upgrades					\$15,200.00
Roofs	\$15,000.00				
Parking Lot				\$15,000.00	
ADA Site Work		\$74,043.00			
AMP 300 MAPLEWOOD MEADOWS SUB TOTAL	\$255,000.00	\$349,994.00	\$130,000.00	\$15,000.00	\$30,400.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 400 PARKVIEW TERRACE (150 UNITS)					
Abatements					\$20,000.00
Paint			\$190,000.00		
Elevator Upgrades/Repair				\$42,000.00	
AMP 400 PARKVIEW TERRACE SUB TOTAL	\$0.00	\$0.00	\$190,000.00	\$42,000.00	\$20,000.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
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HOMES FOR GOOD HOUSING AGENCY
CAPITAL FUND 5-YEAR ACTION PLAN



AMP 500 LINDBERG PLACE (40 UNITS)	FY18-FY22				
Plumbing and Storm Drains				\$10,000.00	
Parking Lot			\$10,000.00		
Paint			\$80,000.00		
Roof				\$10,000.00	
Elevator Upgrades				\$35,000.00	
Bath Upgrades			\$74,000.00		\$125,000.00
AMP 500 LINDBERG PLACE SUB TOTAL	\$0.00	\$0.00	\$164,000.00	\$55,000.00	\$125,000.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 500 VENETA VILLA (30 UNITS)					
Plumbing and Storm Drain					\$15,000.00
Roofs (Sealant on Metal Roofs)					\$20,000.00
Concrete Walks and Slabs			\$50,000.00		\$20,000.00
Trees					\$10,000.00
Paint				\$60,000.00	
Windows					\$110,000.00
Parking Lot				\$6,000.00	
AMP 500 VENETA VILLA SUB TOTAL	\$0.00	\$0.00	\$50,000.00	\$66,000.00	\$175,000.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 500 VENETA VILLA SCATTERED SITES (20 UNITS)					
Comp Mods				\$30,000.00	
Concrete Walks and Slabs				\$20,000.00	\$47,800.00
Kitchen Upgrades					\$8,000.00
Bath Upgrades					\$8,000.00
Roof					\$10,000.00
Trees			\$10,000.00		
Driveways/Parking Lots	\$23,795.00				\$25,000.00
AMP 500 VENETA VILLA SCATTERED SITES SUB TOTAL	\$23,795.00	\$0.00	\$10,000.00	\$50,000.00	\$98,800.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 600 CRESVIEW VILLA (34 UNITS)					
Abatements				\$8,000.00	
Concrete Walks and Slab			\$71,994.00		
Ext Doors					\$40,000.00
Plumbing and Storm Drains					\$10,000.00
Exterior Building Paint			\$60,000.00		
AMP 600 CRESVIEW VILLA SUB TOTAL	\$0.00	\$0.00	\$131,994.00	\$8,000.00	\$50,000.00

WORK TO BE DONE	FY18	FY19	FY20	FY21	FY22
AMP 600 RIVERVIEW TERRACE (60 UNITS)					
Seismic Upgrade				\$82,994.00	
Concrete Walks and Slab					\$20,000.00
Elevator Upgrades					\$50,000.00
Unit Comp Mods					\$100,000.00
AMP 600 RIVERVIEW TERRACE SUB TOTAL	\$0.00	\$0.00	\$0.00	\$82,994.00	\$170,000.00

HOMES FOR GOOD HOUSING AGENCY
 CAPITAL FUND 5-YEAR ACTION PLAN
 FY18-FY22



Work Item Sub Totals \$858,994.00 \$833,994.00 \$868,994.00 \$868,994.00 \$808,994.00

<u>OTHER</u>	FY18	FY19	FY20	FY21	FY22
1406- Operations	\$247,728.00	\$247,728.00	\$247,728.00	\$247,728.00	\$247,728.00
1408- Management Improvements	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00	\$40,000.00
1410- Grant Administration Fee	\$137,580.00	\$137,580.00	\$137,580.00	\$137,580.00	\$137,580.00
1480- Grant Audit	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
1480- Architect	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00
1480 Fees and Sundries	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
1480 GPNA	\$5,000.00	\$40,000.00	\$5,000.00	\$5,000.00	\$5,000.00
1480- Fees & Sundries	\$35,000.00	\$70,000.00	\$35,000.00	\$35,000.00	\$35,000.00
1480- Equipment	\$20,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$70,000.00
1480- Relocation	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
1480- Contingency (3%)	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00
"Other" Sub Totals	\$517,308.00	\$542,308.00	\$507,308.00	\$507,308.00	\$567,308.00

	FY18	FY19	FY20	FY21	FY22
Work Items Sub total	\$858,994.00	\$833,994.00	\$868,994.00	\$868,994.00	\$808,994.00
Others Sub Total	\$517,308.00	\$542,308.00	\$507,308.00	\$507,308.00	\$567,308.00
Total	\$1,376,302.00	\$1,376,302.00	\$1,376,302.00	\$1,376,302.00	\$1,376,302.00



AGENDA CHECKLIST

AGENDA INFORMATION TO BE SUBMITTED TO THE BOARD OFFICE
 (Aisha McCoy, Administrative Specialist ext 2525)

AGENDA TITLE: In the Matter of Authorizing the Executive Director to Apply for Assistance from Oregon Health Authority (OHA) Health Systems Division (HSD) for the Housing First Apartment Community in Eugene, Oregon

One Title Memo

Agenda Packet
 One Original Hard Copy plus
 One copy e-mailed to
amccoy@homesforgood.org

Material Due
 Due by 12 pm Wednesday
 preceding the week it will be
included in the agenda notice

DEPARTMENT Real Estate Development

CONTACT Steve Ochs EXT 2530

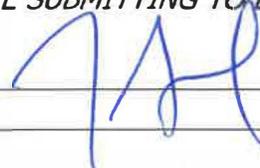
PRESENTER Nora Cronin EXT 2521

AGENDA DATE: 06/27/2018

THIS ITEM WILL INVOLVE:

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Consent Calendar | <input type="checkbox"/> Report | <input type="checkbox"/> Appointments | <input type="checkbox"/> Committee Reports |
| <input checked="" type="checkbox"/> ORDER/Resolution | <input type="checkbox"/> Discussion & Action | <input type="checkbox"/> Discussion Only | |
| <input type="checkbox"/> Ordinance/Public Hearing | <input type="checkbox"/> Presentation | | |
| Public Comment Anticipated? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Estimated Time <u>10 min</u> | |

NOTE: DEPARTMENT MANAGER MUST SIGN OFF BEFORE SUBMITTING TO BOARD OFFICE

Executive Director/: Jacob Fox Date 06/19/2018 

Deputy Director _____

Legal Staff-Review by: _____ Date _____

*if required _____

Management Staff- _____ Date _____

Review by: _____



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HOMES FOR GOOD MEMORANDUM

TO: Homes for Good Board of Commissioners

FROM: Steven Ochs, Real Estate Development Director

AGENDA ITEM TITLE: In the Matter of Authorizing the Executive Director to Apply for Assistance from Oregon Health Authority (OHA) Health Systems Division (HSD) for the Housing First Apartment Community in Eugene, Oregon

AGENDA DATE: June 27, 2018

I MOTION

That the Executive Director or Deputy Director is authorized to apply for assistance from Oregon Health Authority (OHA) Health Systems Division (HSD) for the Housing First Apartment Community on Martin Luther King Jr Boulevard in Eugene, Oregon.

II ISSUE

A community partnership has been formed to identify, engage, house and support Lane County residents that have been homeless the longest and use the most community resources.

Oregon Health Authority (OHA) Health Systems Division (HSD) announced the availability of funds through the 2017-2019 Competitive Housing Development Application. This funding opportunity is for Supportive or Integrated Housing for individuals with a serious and persistent mental illness (SPMI) or a substance use disorder (SUD). The Housing First Apartment Community fits under the Supportive Housing for individuals with SPMI category. The funding maximum per project is \$540,000 and the application is due July 18, 2018.

III DISCUSSION

A. Background/Analysis

This Housing First project on Martin Luther King Jr Boulevard was born out a community partnership to identify, engage, house and support the people in Lane County who have been homeless the longest and utilize the most resources. The project is included in the Poverty and Homelessness Board Strategic Plan. Lane County is donating the land for development of the project next to the Lane County Behavioral Health Building. Modeled on the harm reduction/housing first model, this project will provide permanent, stable housing as the first priority, while also providing the support services necessary to ensure an individual's maximum opportunity for overcoming homelessness.

A partnership was formed to do initial work on such a project. In July 2017 Lane County,

Homes for Good Housing Agency and St. Vincent de Paul provided a report to the Poverty and Homelessness Board Executive Committee which included initial project work that had been done on this project. The team worked with Bergsund Delaney Architects and Meili Construction to design and price a Housing First Building located next to the Lane County Behavioral Health building on Martin Luther King Jr Boulevard.

The property is zoned Public Land (PL) and allows for the development of “specialized housing.” In order for this to be permitted outright, the project will require a development scenario in which the land is owned by a public agency and operated by the same agency (i.e. Homes for Good). This interpretation is from a Land Use Consultant and verified by Homes for Good’s attorney. We will need to submit a zoning verification request to the city of Eugene. The property will need to be partitioned and ownership will need to be transferred from Lane County Government to Homes for Good Housing Agency prior to closing on the project’s financing. Additionally, we need support from the city of Eugene on the timely completion of flood plain analysis and the HUD required Environmental Review.

Housing First on MLK would include a four story building consisting of approximately 35,000 square feet. It would include a ground floor common use area and service area with 50 residential units above. The units would be approximately 360 square feet.

Project Financing – Funds will come from Low-Income Housing Tax Credits (LIHTC), State GHAP funds, as well as Systems Development Charge credits from the City of Eugene and other private and public funds. Lane County would need to provide operating subsidies for the project due to the cost associated with the 24/7 staffing necessary to manage this fragile population. The OHA Competitive Housing Development Application is seen as an opportunity to bring funding to the project that would be specific to helping individuals with a serious and persistent mental illness.

B. Recommendation

Approval of the attached order is necessary to allow Homes for Good Housing Agency to apply for the Oregon Health Authority (OHA) Health Systems Division (HSD) Competitive Housing Development Application funding.

C. Timing

Oregon Health Authority (OHA) Health Systems Division (HSD) Competitive Housing Development Application is due on July 18, 2018.

IV IMPLEMENTATION/FOLLOW-UP

Same as Item III. C. above.

V ATTACHMENTS

None

IN THE BOARD OF COMMISSIONERS OF THE
HOMES FOR GOOD HOUSING AGENCY, OF LANE COUNTY OREGON

ORDER 18-27-06-04H

In the Matter of Authorizing the Executive
Director to Apply for Assistance from Oregon
Health Authority (OHA) Health Systems
Division (HSD) for the Housing First
Apartment Community in Eugene, Oregon

WHEREAS, Homes for Good Housing Agency recognizes the need to address the issue of people in our community that have been chronically homeless;

WHEREAS, Homes for Good Housing Agency recognizes that the chronically homeless use a proportionally much higher per capita share of community resources, including shelters and emergency services, and have higher rates of incarceration and recidivism;

WHEREAS, Homes for Good Housing Agency acknowledges that the Housing First model is effective for people that have long histories of homelessness with complex service needs and recognizes the need to provide permanent stable housing as the first priority;

WHEREAS, Homes for Good Housing Agency has undertaken the development of a Housing First Apartment Community on Martin Luther King Jr Boulevard to address this community need; and

WHEREAS, Homes for Good Housing Agency wishes to obtain assistance from the Oregon Health Authority Health Systems Division to provide funding for units specifically set aside for individuals with severe and persistent mental illness.

NOW IT IS THEREFORE ORDERED THAT:

The Homes for Good Housing Agency resolves to develop a 50-unit Housing First affordable housing development for the chronically homeless;

The Executive Director or Deputy Director is authorized to apply for \$540,000 in funding from the Oregon Health Authority Health Systems Division for the Housing First Apartment Community for the chronically homeless, located on Martin Luther King Jr Boulevard in Eugene Oregon;

Homes for Good Housing Agency will accept the responsibilities and requirements of the funds that are requested through the Oregon Health Authority Health Systems Division Competitive Housing Development Application;

That the Executive Director or Deputy Director is authorized to execute the program and legal documents associated with accepting the tax credit, grant, and loan programs;

That the Executive Director, Deputy Director or Real Estate Development Director is authorized to release project information to Oregon Health Authority Health Systems Division

from the financial partners listed in the application and authorizes Oregon Health Authority Health Systems Division to verify any application information as required to complete its due diligence; and

That the Executive Director, Deputy Director or Real Estate Director is authorized to sign all draw requests, monthly progress reports, and miscellaneous forms associated with the tax credit, grant, and loan programs awarded to the project.

DATED this _____ day of _____, 2018

Chair, Homes for Good Board of Commissioners



AGENDA CHECKLIST

AGENDA INFORMATION TO BE SUBMITTED TO THE BOARD OFFICE
 (Aisha McCoy, Administrative Specialist ext 2525)

AGENDA TITLE: In the Matter of Authorizing Formation of Sheldon Village Apartments LLC.

One Title Memo

Agenda Packet
 One Original Hard Copy plus
 One copy e-mailed to
amccoy@homesforgood.org

Material Due
 Due by 12 pm Wednesday
 preceding the week it will be
included in the agenda notice

DEPARTMENT	Real Estate Development		
CONTACT	Steve Ochs	EXT	2530
PRESENTER	Steve Ochs	EXT	2530

AGENDA DATE: **06/27/2018**

THIS ITEM WILL INVOLVE:

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Consent Calendar | <input type="checkbox"/> Report | <input type="checkbox"/> Appointments | <input type="checkbox"/> Committee Reports |
| <input checked="" type="checkbox"/> ORDER/Resolution | <input type="checkbox"/> Discussion & Action | <input type="checkbox"/> Discussion Only | |
| <input type="checkbox"/> Ordinance/Public Hearing | <input type="checkbox"/> Presentation | | |
| Public Comment Anticipated? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Estimated Time <u> </u> / <u> </u> min <u> </u> | |

NOTE: DEPARTMENT MANAGER MUST SIGN OFF BEFORE SUBMITTING TO BOARD OFFICE

Executive Director/: **Jacob Fox** Date **06/19/2018**
 Deputy Director _____
 Legal Staff-Review by: _____ Date _____
 *if required _____
 Management Staff- _____ Date _____
 Review by: _____



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300 West Fairview Dr., Springfield, OR 97477 • PH 541-682-4090 • FAX 541-682-3875



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HOMES FOR GOOD M E M O R A N D U M

TO: Homes for Good Board of Commissioners

FROM: Steve Ochs, Real Estate Development Director

AGENDA ITEM TITLE: In the Matter of Authorizing Formation of Sheldon Village Apartments LLC.

AGENDA DATE: June, 27th, 2018

I MOTION

It is moved that the Agency is authorized to execute the necessary documents to form Sheldon Village Apartments LLC.

II ISSUE

Homes for Good Housing Agency intends to rehabilitate Sheldon Village Apartments using tax-exempt bond proceeds. In order to facilitate this financing, it is now necessary to obtain Board authorization to form the LLC and complete project financing.

III DISCUSSION

A. Background/Analysis

The Sheldon Village Apartments, at 2475 Sheldon Village Loop in Eugene and consist of 78 affordable units (1 bedroom apartments, 2 bedroom apartments, 2 bedroom townhouse apartments, and 3 bedroom townhouse apartments). The apartments are made up of two separate projects, Sheldon Village I and Sheldon Village II which were both primarily financed by low income housing tax credits (LIHTC) and constructed in 2004 and 2005.

In 2015, Homes for Good identified construction and design defects that were causing water intrusion in the envelope of the project. Subsequent investigation indicated that a full envelope replacement and re-design of certain components would be necessary to preserve the long-term viability of Sheldon Village. Sheldon Village is currently composed of two separate entities, Sheldon Village I and Sheldon Village II After evaluating various programs as potential sources of funding for this rehab, Homes for Good housing agency issued a RFP for tax-exempt bond financing. Homes for Good evaluated the proposals and selected Banner Bank as the successful respondent. In order to facilitate this financing, it is necessary to combine the two current entities and form Sheldon Village Apartments LLC.

This Board Order would:

1. Authorize formation of Sheldon Village Apartments LLC, the creation of accounts as may be necessary or convenient in the name of Sheldon Village Apartments LLC; and
2. Identify authorized representatives of the Agency who are authorized to sign such letters of intent and the operating agreements on behalf of the agency and/or Sheldon Village Apartments LLC; and
3. Provide a general form of ratification as we have been advised by legal counsel to include.

B. Recommendation

Approval of the proposed motion.

IV IMPLEMENTATION/FOLLOW-UP

Upon approval of the Order, the LLC will be formed and the documents be executed as required.

V ATTACHMENTS

None

IN THE BOARD OF COMMISSIONERS OF THE
HOMES FOR GOOD HOUSING AGENCY, OF LANE COUNTY OREGON

ORDER 18-27-06-05H

In the Matter of Authorizing Formation of
Sheldon Village Apartments LLC.

WHEREAS, Homes for Good Housing Agency is a public body corporate and politic, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out and effectuate the purposes of the ORS 456.055 to 456.235 (the "Housing Authorities Law"); and

WHEREAS, a purpose of Homes for Good Housing Agency under the Housing Authorities Law is to construct, acquire, manage and operate affordable housing for persons of lower income; and

WHEREAS, Homes for Good Housing Agency is authorized by ORS 456.120 to form, finance and have a nonstock interest in, and to manage or operate, partnerships, nonprofit corporations and limited liability companies in order to further the purposes of Homes for Good Housing Agency; and

WHEREAS, consistent with its purposes and powers, Homes for Good Housing Agency intends to cause an affiliate entity to: rehabilitate, own, and operate a 78 unit permanent affordable housing development intended for occupancy at 2475 Sheldon Village LP. (the "Project"); and

WHEREAS, for the purposes of pursuing such rehabilitation and operation of the Project Homes for Good Housing Agency finds it to be in the best interests of the Agency to authorize the formation of a limited liability company to be known as Sheldon Village Apartments LLC or such other name permitted by the Oregon Secretary of State (the "LLC"); and

WHEREAS, Homes for Good Housing Agency has determined that it is in the best interests of Homes for Good Housing Agency, the LLC and the Project to enter into letters of intent related to a tax-exempt bond financing, from Banner Bank, and to engage in further negotiations regarding the terms of such financing; and

NOW IT IS THEREFORE ORDERED THAT:

1. Authorize Formation the LLC and Creation of Accounts.

BE IT RESOLVED, that the Agency is authorized to execute and deliver the following documents:

- a) Articles of Organization of Sheldon Village Apartments LLC, an Oregon limited liability company, to be effective as of the day they are filed with the Oregon Secretary of State; and
- b) An Operating Agreement of Sheldon Village Apartments LLC, to be effective as of the date the Articles of Organization of the limited liability company are filed with the Oregon Secretary of State; and
- c) Such documents as may be necessary or convenient to establish in the name of the LLC such checking, savings and other accounts at such state or federally chartered banks as any Authorized Representative, as that term is defined in these Resolutions, may determine (such determination to be conclusively demonstrated by the signature of any Authorized Representative on such document); and

BE IT FURTHER RESOLVED, that the LLC shall be managed by the Manager.

2. Authorize Negotiation and Execution of Letters of Intent.

BE IT RESOLVED that the AGENCY is authorized to negotiate, execute and deliver on behalf of the Agency, and/or the LLC as the case may be, a letter of intent relating to an anticipated tax-exempt bond financing from Banner Bank, both in such form approved by any Authorized Representative (such approval to be conclusively demonstrated by the signature of any Authorized Representative on such document);

3. Authorized Representatives.

BE IT RESOLVED that the following identified person shall be the Authorized Representative as that term is used in these Resolutions and authorized, empowered and directed to perform the actions authorized herein on behalf of the Agency, and/or the LLC as the case may be:

Jacob Fox
Valerie Warner

In addition to the Authorized Representatives named above, the following named individual(s) shall have the authorization to execute draw requests, monthly progress reports and miscellaneous forms associated with tax-exempt bond financing:

Steve Ochs

4. General Resolutions Authorizing and Ratifying Other Actions

BE IT RESOLVED, that any Authorized Representative is authorized to negotiate, execute and deliver on behalf of the Agency and the LLC, as the case may be, such other agreements, certificates, and documents, and to take or authorize to be taken all such other actions any Authorized Representative shall deem necessary or desirable to carry out the transactions contemplated by the foregoing resolutions (such determination to be conclusively demonstrated by the signature of any Authorized Representative on such document); and

BE IT FURTHER RESOLVED, that to the extent any action, agreement, document or certification has heretofore been taken, executed, delivered or performed by an Authorized Representative named in these Resolutions on behalf of the Agency, acting in its own behalf or as a member of the LLC, and in furtherance of the Project, the same is hereby ratified and affirmed.

DATED this _____ day of _____, 2018

Chair, Homes for Good Board of Commissioners



AGENDA CHECKLIST

AGENDA INFORMATION TO BE SUBMITTED TO THE BOARD OFFICE
 (Aisha McCoy, Administrative Specialist ext 2525)

AGENDA TITLE: In the Matter of Homes for Good Development Presentation Part 2

One Title Memo

Agenda Packet
 One Original Hard Copy plus
 One copy e-mailed to
amccoy@homesforgood.org

Material Due
 Due by 12 pm Wednesday
 preceding the week it will be
included in the agenda notice

DEPARTMENT *Real Estate Development*

CONTACT *Steve Ochs* EXT *2530*

PRESENTER *Steve Ochs* EXT *2530*

AGENDA DATE: *06/27/2018*

THIS ITEM WILL INVOLVE:

- | | | | |
|---|--|--|--|
| <input type="checkbox"/> Consent Calendar | <input type="checkbox"/> Report | <input type="checkbox"/> Appointments | <input type="checkbox"/> Committee Reports |
| <input type="checkbox"/> ORDER/Resolution | <input type="checkbox"/> Discussion & Action | <input type="checkbox"/> Discussion Only | |
| <input type="checkbox"/> Ordinance/Public Hearing | <input checked="" type="checkbox"/> Presentation | | |
| Public Comment Anticipated? | <input type="checkbox"/> Yes <input type="checkbox"/> No | Estimated Time <u> 30 min </u> | |

NOTE: DEPARTMENT MANAGER *MUST* SIGN OFF BEFORE SUBMITTING TO BOARD OFFICE

Executive Director: *Jacob Fox* Date *06/19/2018*

Deputy Director _____

Legal Staff-Review by: _____ Date _____

*if required _____

Management Staff- _____ Date _____

Review by: _____



177 Day Island Rd., Eugene, OR 97401 • PH 541-682-3755 • FAX 541-682-3411
300 West Fairview Dr., Springfield, OR 97477 • PH 541-682-4090 • FAX 541-682-3875

Homes. People. Partnerships. Good. www.homesforgood.org



HOMES FOR GOOD PRESENTATION

TO: Homes for Good Board of Commissioners
FROM: Steven Ochs, Real Estate Development Director
AGENDA ITEM TITLE: Homes for Good Development Presentation Continued
AGENDA DATE: June 27, 2018

I MOTION

No Motion Needed

II ISSUE

Continuation of the Homes for Good Real Estate Development pipeline and funding presentation from 05/23/2018.

III DISCUSSION

A. See Presentation

IV IMPLEMENTATION/FOLLOW-UP

None required.

V ATTACHMENTS

Real Estate Development Power Point Presentation



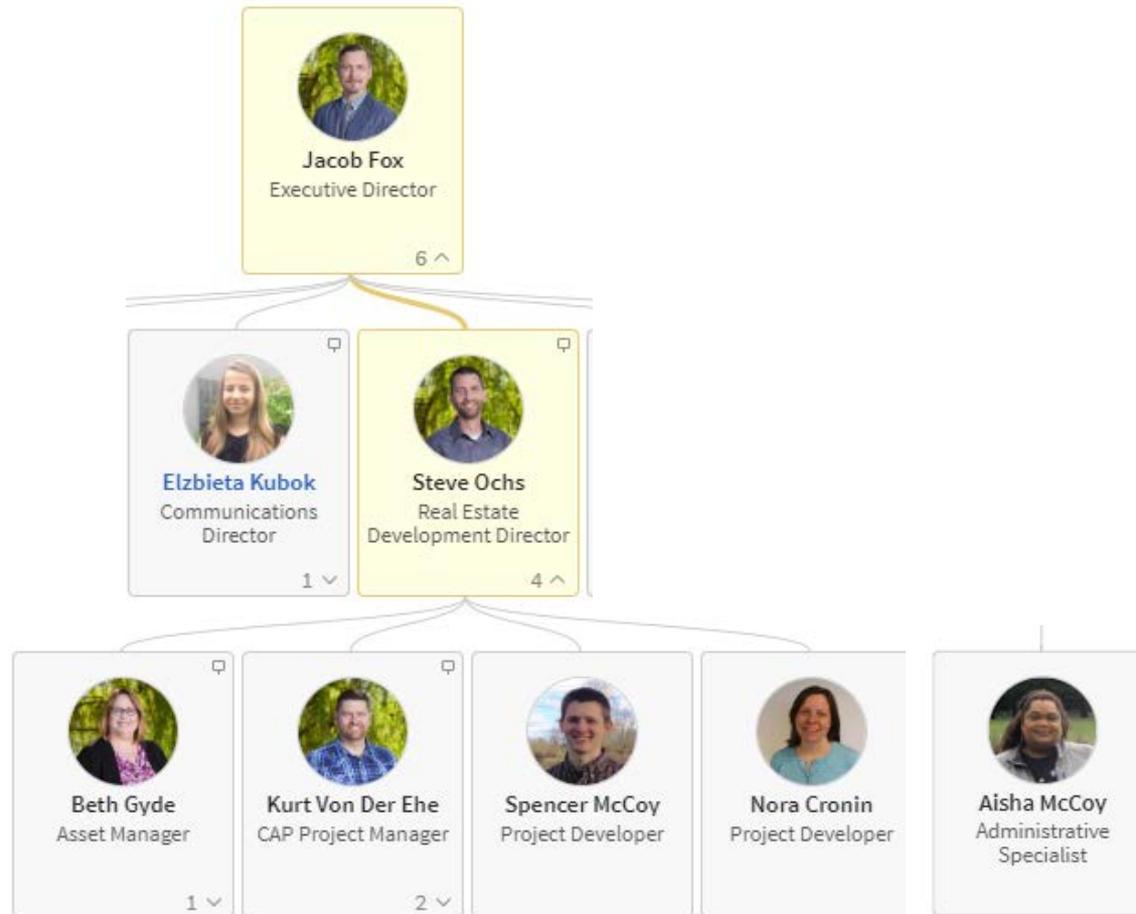
Real Estate Development
Homes for Good Board Meeting
May 23rd, 2018

Real Estate Development



- Homes for Good is committed to developing projects that are energy efficient, clean, safe and attractive while maintaining affordability for many years to come. By partnering with numerous agencies, non-profits and private businesses, Homes for Good is able to provide needed housing along with critical services that serve as a launching platform for families and individuals who are struggling in the current housing market and allow them a chance of future success.
- Typical types of funding: LIHTC, SDC waivers, HOME, GHAP, Meyer Memorial Trust, National Housing Trust, variety of private funding
- Recent partners include: SVDP, Sponsors Inc. , Cornerstone Community Housing, Obie Companies, VA
- Architects and General Construction partners: Bergsund DeLaney Architecture and Planning P.C., PIVOT Architecture, Essex Construction, Meili Construction, Chambers Construction

Real Estate Development Team



Real Estate Development Pipeline



Bascom Village II



The Oaks at 14th



Richardson Bridge Rehab



Market District Commons



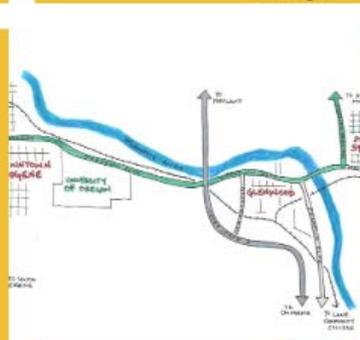
Housing First



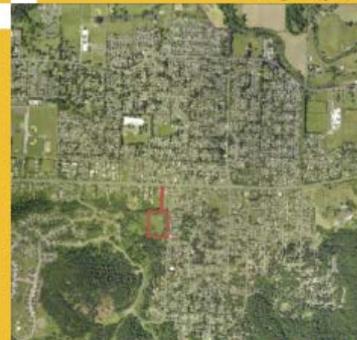
Taney Property



Rehab Projects: Firwood



Glenwood



67th Street Springfield



Scattered sites sales

Real Estate Development



Unit production

- Five years - 2008-2013 = 45 units + 44 units RD rehab + 35 units LIHTC rehab
- Four years - 2014-2018 = 102 units + 32 units LIHTC rehab
- Five years - 2018-2023 = 300 units projected



Life Cycle of a Development Project



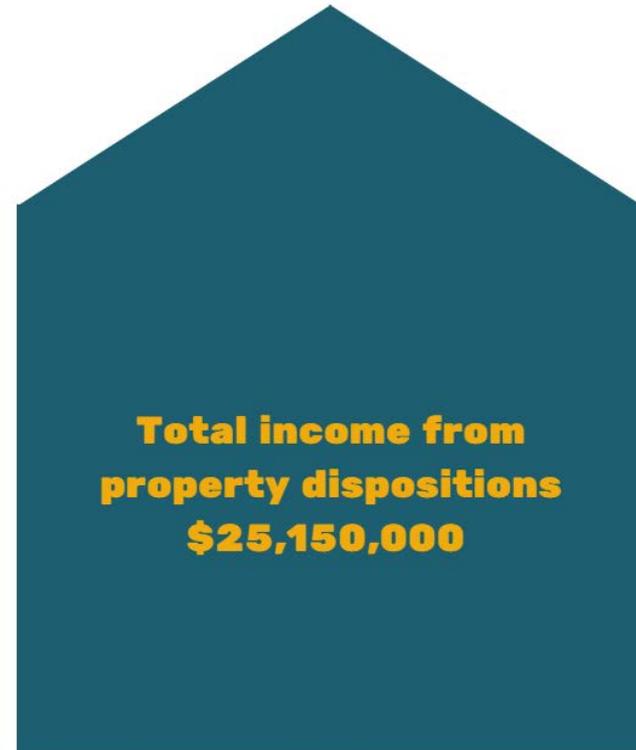
- Predevelopment activities
- Funding application
- Development activities
- Construction Period
- Post Construction activities

High Costs of Real Estate Development Projects



- Land acquisition
- Land use process
- Funding leverage and gap financing
- Permits and initial architect fees, other consultants, legal support
- Pre-development costs average (excluding land acquisition) \$300,000 - \$500,000
- Developer Fee average return to developer \$850,000 - \$1m
- Average total project cost \$9-13million
- Total costs of running Real Estate Development Division \$332,505.19 - total of 4 FTE spread over 7 people not including Asset Management
- Asset Management \$124,000 - 1.35 FTE spread over 3 people

Financial Overview Homes for Good Development Pipeline



Financial Overview Cont'd

Income from property dispositions



Property Disposition	Price Assumptions	Timeframe for Sale
River Road 3.5 acres	\$850,000	Oct-18
48th and Main 8.5 acres	\$1,000,000	Dec-18
Day Island 1.5 acres	\$2,000,000	Jul-19
12 scattered sites	\$2,300,000	Oct-17
100 scattered sites	\$19,000,000	Jul-19
	\$25,150,000	

Financial Overview Cont'd

Land Acquisitions



Details	Price Assumptions	Timeline for Acquisition
Homes for Good Admin building. Purchased September 2017	\$3,750,000	Sep-17
3 acres for 50 unit project tied to scattered site disposition. Taney Property in Eugene	\$590,000	Jul-18
6 acres for 50 unit project tied to scattered site disposition. 67th Street in Springfield	\$350,000	Jul-18
Glenwood 1.5 acres for 150 unit project. Have purchase option agreement in place	\$750,000	Apr-18
1/2 City Block. Have Lease Option agreement in place	\$1,100,000	Jun-18
	\$6,540,000	

Financial Overview Cont'd

Development Projects Needs



Other Financing Needs	Amount	Details	Timeline
Energy Performance Contracting	\$4,500,000	Homes for Good corporate borrowing	Sep-17
Homes for Good Bond Issuance for Firwood	\$2,500,000	Homes for Good corporate borrowing tied to property cashflow	Oct-18
Homes for Good Admin Building Improvements	\$5,000,000	To be determined	Sep-18
Sheldon Viillage	\$3,500,000	Homes for Good corporate borrowing tied to property cashflow	Oct-18
\$15,500,000			

Financial Overview Cont'd

Other Projects Financing Needs



Homes for Good Development Pipeline	Details	Primary Financing Type	Gap Financing Needs	Timeline
Richardson bridge rehab project	Part of Homes for Good's Public Housing RAD Conversion Project - Richardson Bridge rehab funded and in progress	9% LIHTC	none	May-17
Sheldon Village/Willakenzie rehab project	Sheldon is a 12 year old property with construction defects. Willakenzie added to get to 4% LIHTC unit threshold	Homes for Good Bond issuance	\$350,000	Oct-18
Firwood rehab	Firwood has serious siding, roof and parking lot issues	Homes for Good Bond issuance	\$350,000	Oct-18
6th and Oak/ Bus Barn	Downtown Eugene new construction project with 1st floor commercial	9% LIHTC	\$250,000	Oct-18
Glenwood (in Springfield)	Part of Glenwood master plan/urban renewal project	9% LIHTC	\$500,000	Oct-19
RAD Phase 2 Eugene	need to close this transaction before we sell the 100 scattered sites.	4% LIHTC - combine with RAD Phase 2 Springfield	\$4,000,000	Apr-19
RAD Phase 2 Springfield	need to close this transaction before we sell the 100 scattered sites	4% LIHTC - combine with RAD Phase 2 Springfield	\$4,000,000	Apr-19
			\$8,750,000	

Market District Commons



Market District Commons



Development Details

- Public Private Partnership with Obie Company
- Partnership with Full Access and VetLIFT
- Lane County 99-year Land Lease, Lane County decommissioned oil tanks from the site
- Sources: City of Eugene SDCs Waivers, HOME funds, 9% LIHTC application, National Housing Trust funding application, GHAP application,
- 50 units – workforce housing, 15 set aside for Veterans and persons with disabilities

Housing First



Development Details



- Poverty and Homelessness Board Strategic Priority, Community need
- Lane County Land Donation
- Neighboring Lane County Behavioral Health clinic
- Partnership with Lane County Health and Human Services and SVDP
- Sources: City of Eugene SDCs Waivers, 9% LIHTC application in 2019, Application for Meyer Memorial Trust submitted in April 2018, funding from health care partners
- 50 units supportive housing for chronically homeless, with access to services
- Net of Supportive Services provided by Lane County Health and Human Services
- Frequent User Systems Engagement Project

Site conditions and land use



- **Zoning is Public Land (PL)**

- The Housing First project would fall under “specialized housing” or “public use” and therefore would be an allowed use in this zoning
- To be permitted outright within this zone, the project will require a development scenario in which the land is owned by a public agency and operated by the same agency (i.e. Homes for Good)
- This interpretation is from Land Use Consultant and verified by Homes for Good attorney
- Need to submit a zoning verification request to City of Eugene

- **Environmental**

- Need support from the City of Eugene on the timely completion of the flood plain analysis and HUD required Environmental Review

- **Partition**

- The property will need to be partitioned and ownership will need to be transferred from Lane County Government to Homes for Good Housing Agency
- Homes for Good will need to hire a surveyor and begin this process soon

Housing First Model

- EPD arrests ↓ 82%
- LCSO jail intakes ↓ 50%
- EMC court citations ↓ 75%
- Overall healthcare costs ↓ 53%
- Emergency Department utilization ↓ 26%



Housing First supports people who are homeless and living with mental illness by combining the immediate provision of permanent housing with wrap-around supports.

RAD 2.0.



RAD 2.0.



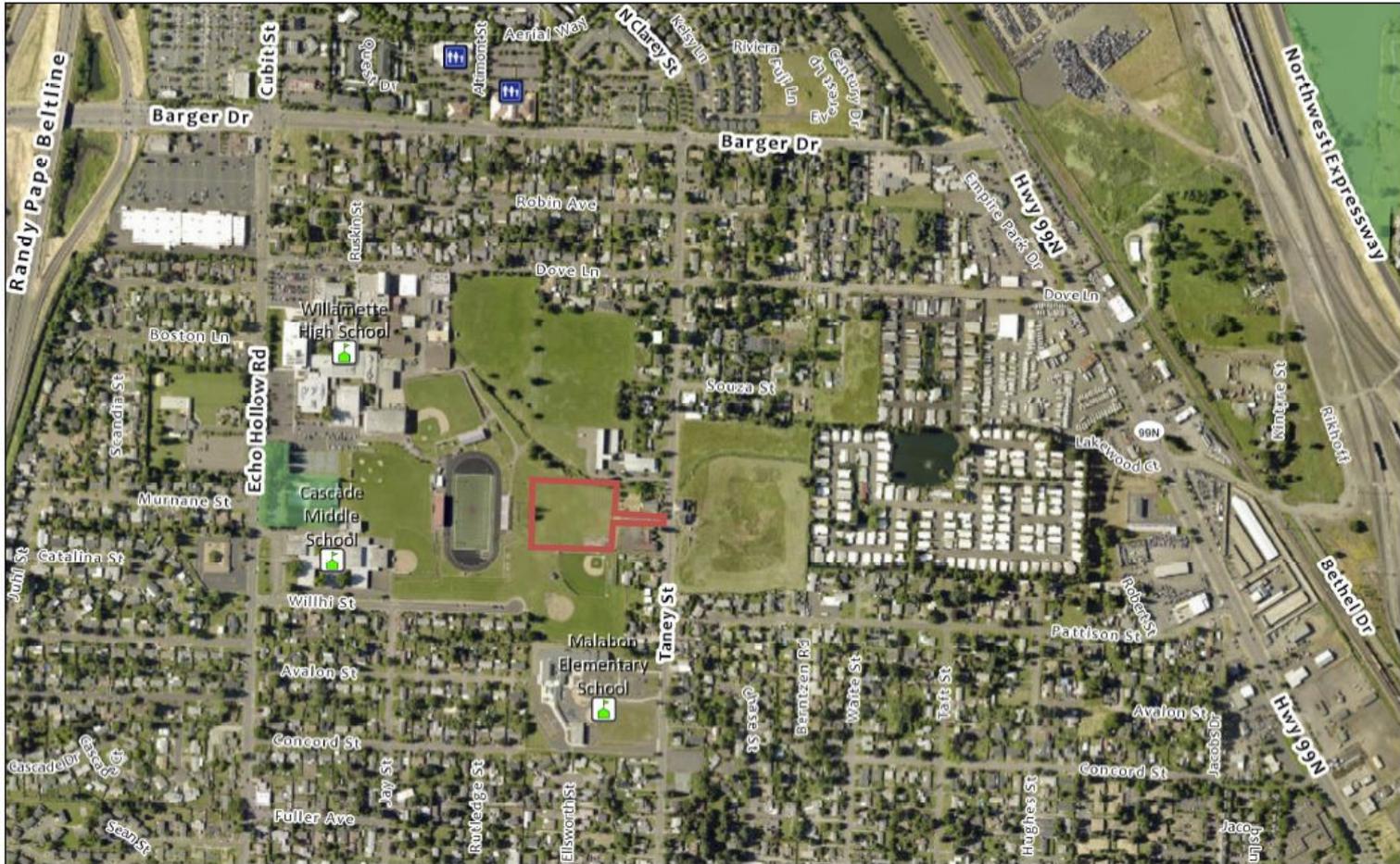
- HUD Rent Assistance Demonstration Program
- High maintenance costs
- Sale of 100 Public Housing scattered single family homes and duplexes 2019
- Partnership with NEDCO on sales to first time homebuyers
- Proceeds from sale to fund project costs for Taney Rd and 67th Street developments
- \$8-10million of gap financing needed

First Time Homebuyers Program

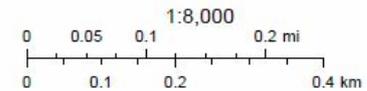


Taney Road

Taney Site Map



5/2/2018, 8:59:01 AM



Development Details



- Site right next to Willamette High School, Cascade Middle School, and Malabon Elementary School
- Potential partnership with Bethel School District
- Sources: City of Eugene SDCs Waivers, 4% LIHTC application in 2019, OHCS preservation funding, scattered sites sale proceeds and additional gap financing
- 40-50 units multifamily, unit replacement of similar bedroom configuration

67th Street in Springfield



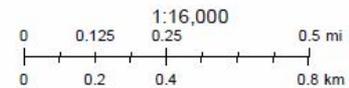
240 S 67th Site Map



5/1/2018, 5:25:08 PM

Lines

— Override 1



Development Details



- Proximity to schools
- Sources: 4% LIHTC application in 2019, OHCS preservation funding, scattered sites sale proceeds, and additional gap financing
- 50-60 units multifamily, unit replacement of similar bedroom configuration

Glenwood



Overview of Phase 1 Improvements in Glenwood



More Information

Receive periodic project information by email:
Please send an email with your name to
info@newfranklinblvd.org

Request information by phone:
Please call Project Manager Kristi Krueger at 541-726-4584
and provide your name and phone number.

Website:
www.newfranklinblvd.org



Development Details



- Purchased April 2018
- Infrastructure improvements in Glenwood
- Vision: Mixed Market Rate and Affordable units
- Transportation access: EmX
- Early pre-development stage
- Six years of pre-development costs

Sheldon Village



Firwood



Preservation Needs

- Competing with new construction funding
- Addressing major envelope and building systems issues
- Highest needs: Firwood Apartments and Sheldon Village I&II
- Portfolio wide needs – average building age in portfolio 30-40 years

Subsidy conversion and rehabilitation of Public Housing Portfolio



- Feasibility Analysis of HUD Rent Assistance Demonstration (RAD) and Section 18. Demo/Dispo Program
- Decreasing federal support for large capital projects vs. age of our portfolio

Questions?

Thank you!