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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.

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- (7) “**Contract**” means a “Public Contract,” as defined in ORS 279A.010.
- (8) “**Contract Price**” means, as the context requires, (a) the maximum payments that a Contracting Agency will make 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

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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

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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, 279A.065 & 279A.180

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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 and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by, or that employs a disabled veteran as defined in ORS 408.225.

(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.

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(b) As provided in ORS 200.065 and 200.075 a Contracting Agency may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g. act as a subcontractor) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if 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 suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).

(c) A Contracting Agency may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or ORS 200.075, as applicable.

(d) The Contracting Agency shall notify the Person in Writing of a proposed DBE Disqualification pursuant to this section, served personally 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.

(e) 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.

(f) Notice of DBE Disqualification. The Contracting Agency will notify the Person in Writing of its DBE Disqualification, served personally 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.

Stat. Auth.: ORS 279A.065

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

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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

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making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

Stat. Auth.: ORS 279A.065

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

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

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

- (a) The recycled product is available;
- (b) The recycled product meets applicable standards;
- (c) The recycled product can be substituted for a comparable non-recycled product; and
- (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent, or a higher percentage if a written determination is made by the Contracting Agency and set forth in the Solicitation Document. For purposes of making the foregoing determination, the Contracting Agency shall consider the costs of the goods following any adjustments the Contracting Agency makes to the price of the goods for purposes of evaluation pursuant to Rule 137-046-0310.

(3) 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

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COOPERATIVE PROCUREMENT**137-046-0400 Authority for Cooperative Procurements**

(1) Agencies may participate in, sponsor, conduct or administer Cooperative Procurements as follows:

(a) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for Goods or Services or Personal Services, that use source selection methods substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085 or to establish Contracts for Public Improvements that use a competitive bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.

(b) Contracting Agencies may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish contracts or Price Agreements for the acquisition of Goods or Services or Personal Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(c) Contracting Agencies may participate in, sponsor, conduct or administer Interstate Cooperative Procurements to establish contracts or Price Agreements for the acquisition of Goods or Services or Personal Services that use source selection methods substantially equivalent to those set forth in ORS 279B.055 or 279B.060.

(2) A solicitation and award process uses source selection methods substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 when it has the characteristics set forth in ORS 279A.200 (2). Each Participating 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 in accordance 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,

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- (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

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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 8 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

A Purchasing Contracting Agency may only participate in an Interstate Cooperative Procurement if at least one of the following occurs:

(1) The Solicitation Document for the Interstate Cooperative Procurement lists the Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member as a party that may enter into Contracts or Price Agreements under the terms and conditions of the Original Contract, and the Solicitation Document is advertised in Oregon in compliance with ORS 279B.055 (4) or ORS 279B.060 (4) by either:

(a) The Purchasing Contracting Agency; or

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

(c) 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) If the Solicitation Document issued by the Administering Contracting Agency was not advertised in accordance with Rule 137-046-0460(1), the Purchasing Contracting Agency gives notice of its intent to enter into a Public Contract or Price Agreement based on the terms of the Interstate Cooperative Procurement. The notice of intent shall contain the information required by ORS 279A.220 (2) (b) (B), and the Purchasing Contracting Agency shall advertise the notice in the same manner as provided in ORS 279B.055 (4) (b) and (c). Unless the Purchasing

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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.

(3) 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.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