

**Summary of January 1, 2012**  
**Substantive Rule Changes**

**Division 46**

137-046-0300

**Preferences for Oregon Goods and Services**

- Addition of discretionary preference for Goods fabricated or processed in Oregon or Services or Personal Services performed in Oregon per HB 3000.

**Division 47**

137-047-0257

**Multistep Sealed Bidding**

- Revision to give process flexibility to be defined in the Solicitation Documents and remove some of the mandatory steps.

137-047-0260

**Competitive Sealed Proposals**

- Clarification concerning what information related to the establishment of the Competitive Range a Contracting Agency should include in the Solicitation Document.
- Clarification concerning the requirements related to the inclusion of contract terms and conditions in the Solicitation Document.
- Clarification that Contracting Agencies should apply the standards of the specific industry or business in the Good Cause Determination.

137-047-0261

**Multi-tiered and Multistep Proposals**

- Clarification of rules related to multi-tiered and multistep proposal process and procedures.

- Combined former rules OAR 137-0262 and OAR 137-047-0263 with revised OAR 137-047-0261.

#### **137-047-0262**

#### **Competitive Range; Discussions and Negotiations for Multi-tiered or Multistep Proposals**

- Repealed. Concepts incorporated into OAR 137-047-0261.

#### **137-047-0263**

#### **Multistep Sealed Proposals**

- Repealed. Concepts incorporated into OAR 137-047-0261.

#### **137-047-0270**

#### **Intermediate Procurements**

- Clarification concerning amendment up to \$150,000 or 25% of the original Contract Price.

#### **137-047-0800**

#### **Amendments to Contracts and Price Agreements**

- Clarification concerning extension of the term to be no longer than allowed in the Solicitation Documents, Notice of Sole Source or Special Procurement.

**DIVISION 48**  
**SUMMARY OF JANUARY 1, 2012 SUBSTANTIVE**  
**RULE CHANGES**

**137-048-0100 through 137-048-0240 and 137-048-0260 through 137-048-0320**

Addition of “Photogrammetric Mapping, Transportation Planning or” to any references to “Architectural, Engineering and Land Surveying Services”, to address the expansion of qualifications-based selection processes under HB 3316 (2011).

Addition of “Photogrammetrists, Transportation Planners” to any references to “Architects, Engineers and Land Surveyors”, to address the expansion of qualifications-based selection procedures under HB 3316 (2011).

Correction of typographical errors in the usage of the term “public improvement.”

**137-048-0110**

**Definitions**

Clarification of the “Consultant” definition, to note different use of the defined term under ORS 279C.115.

Clarification of the defined term “Price Agreement”, which is set forth in ORS 279A.010, as applied in Division 48.

Clarification of the defined term “Transportation Planning Services”, which is set forth in ORS 279C.100.

**137-048-0130**

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

Clarification that the available selection procedures now apply to all “Contracting Agencies”, as opposed to the prior procedures for “State Contracting Agencies” and the separate procedures for “Local Contracting Agencies.”

Clarification of the phrase “other pricing information”, consistent with the provisions of HB 3316 (2011).

Clarification of the qualifications based selection requirements of ORS 279C.110, when a Contracting Agency enters into a direct Contract with a Consultant.

Addition of provisions pertaining to “mixed” contracts, clarifying the Division 48 procurement procedures to be utilized in “mixed” contract situations.

Addition of provisions pertaining to a Contracting Agency’s procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services in the context of expert testimony for a claim, lawsuit or alternative dispute resolution proceeding.

Clarification of provisions pertaining to Contracting Agencies’ public disclosure of proposals, consistent with the requirements of HB 3316 (2011).

Removal of references to “Oregon Laws 2009, chapter 880, section 11”, and insertion of references to “ORS 279C.307” in their place.

### **137-048-0200**

#### **Direct Appointment Procedure**

Revision to increase the “Small Estimated Fee” amount in Section (1)(b) from \$50,000 to \$100,000.

Revision to increase the “Continuation of Project With Intermediate Estimated Fee” amount in Section (1)(c) from \$150,000 to \$250,000.

Revision to increase the “Continuation of Project With Extensive Estimated Fee” amount in Section (1)(d) from \$150,000 to \$250,000.

Removal of the separate direct contract method formerly set forth in Section 1(e), applicable to Local Contracting Agencies only and pertaining to expert testimony for a claim, lawsuit or alternative dispute resolution proceeding.

### **137-048-0210**

#### **Informal Selection Procedure**

Revision of the \$150,000 threshold amount in Sections (1) and (5) from \$150,000 to \$250,000.

Clarification of the phrase “other pricing information” in Section (2)(a)(E)(viii), consistent with the provisions of HB 3316 (2011), and clarification that pricing information can be used if the Contracting Agency is procuring Related Services.

Removal of provisions in Section (5) which allowed Contracting Agencies to continue with Contract negotiations with a Consultant under the Informal Selection Procedure, when the Estimated Fee under the resulting contract exceeds \$250,000, provided the Contracting Agency made findings that entering into the Contract will: (1)

promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and (2) 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.

**137-048-0220**

### **Formal Selection Procedure**

Clarification of the phrase “other pricing information” in Section (3)(b)(H) and in Section (4)(a)(B)(xiii), consistent with the provisions of HB 3316 (2011), and clarification that pricing information can be used if the Contracting Agency is procuring Related Services.

Removal of provisions pertaining to Local Contracting Agency procurements under former ORS 279C.110(2).

Clarification that the permissible additional criteria under Section (4)(a)(B)(xiv) cannot include pricing information, when the RFP is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

Correction of prior references to a Consultant’s “available” staff persons to a Consultant’s “committed” staff persons, consistent with HB 3316 (2011).

Clarification that Contracting Agencies can request the following information from Consultants, consistent with ORS 279C.110 (3)(c): price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration.

Correction of language in Section (3)(e), pertaining to RFQ process, to allow a Contracting Agency to select fewer than three Consultants for a “short list” process, when it is not feasible for the Contracting Agency to identify three qualified Consultants for a Project.

**137-048-0230**

### **Ties Among Proposers**

Clarification that the tie-breaking process used by Contracting Agencies for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services cannot be based on pricing information.

**137-048-0240**

### **Protest Procedures**

Clarification of the multiple award Consultant selection protest process in Section (2)(b), regarding the showing that a Consultant has to make in protesting the selection process.

**137-048-0250**

**Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs**

Clarification of references to the Direct Appointment Procedure, the Informal Selection Procedure and the Formal Selection Procedure, by adding references to OAR 137-048-0200, 137-048-0210 and 137-048-0220.

**137-048-0270**

**Price Agreements**

New rule describing the use of Price Agreements and work orders in procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services.

**SUMMARY OF JANUARY 1, 2012 SUBSTANTIVE RULE CHANGES**

**DIVISION 49**

**137-049-0650**

**Requests for Proposals (RFP)**

- Clarification concerning when discussions with Proposers are permitted.
- Clarification concerning when terminating negotiations or discussions with a Proposer are permitted.

**137-049-0860**

**Public Works Contracts**

- Incorporates legislative changes implemented by Oregon Laws 2011, chapter 265 (SB 178), relating to prevailing rate of wage applicable to public works contracts.