



# Board of Directors **Business Session**

April 16, 2020

#think**PCC**first

## Portland Community College Board of Directors

### Vision

Building futures for our Students and Communities

### Mission

Portland Community College supports student success by delivering access to quality education while advancing economic development and promoting sustainability in a collaborative culture of diversity, equity and inclusion.

### Core Themes

- Access and Student Success
- Economic Development and Sustainability
- Quality Education
- Diversity, Equity and Inclusion

*Approved January 21, 2016*

### Who We Are

Portland Community College is a public, multi-campus, comprehensive community college serving the lifelong learning needs of our students. We offer college transfer programs; career and technical education programs; adult basic skills; opportunities to develop English as a second language; high school completion and dual credit; community and continuing education programs; and service-learning opportunities that foster the development of civic responsibility and engagement. Through extensive partnerships with business, industry, labor, educational institutions and the public sector, we provide training and learning opportunities for the local and state workforce and promote economic and community development.

### We Value

- Effective teaching and student development programs that prepare students for their roles as citizens in a democratic society in a rapidly changing global economy
- An environment that is committed to diversity as well as the dignity and worth of the individual
- Leadership through innovation, continuous improvement, efficiency, and sustainability
- Leadership through the effective use of technology in learning and all College operations
- Being a responsible member of the communities we serve by actively participating in their development
- Quality, lifelong learning experiences that helps students to achieve their personal and professional goals
- Continuous professional and personal growth of our employees and students including an emphasis on fit and healthy lifestyles that decrease disease and disability
- Academic Freedom and Responsibility - creating a safe environment where competing beliefs and ideas can be openly discussed and debated
- Collaboration predicated upon a foundation of mutual trust and support
- An agile learning environment that is responsive to the changing educational needs of our students and the communities we serve – making students marketable for jobs in the future and promoting economic development
- The public's trust by effective and ethical use of public and private resources

Portland Community College  
**BOARD OF DIRECTORS**  
PO BOX 19000, Portland, Oregon 97280

April 16, 2020

AGENDA

[LIVE STREAM](#)

If you require additional accommodations, please email [boardmember@pcc.edu](mailto:boardmember@pcc.edu) stating your requirements.

Public comment on agenda items can be emailed by 4:30 pm on the meeting date to [boardmember@pcc.edu](mailto:boardmember@pcc.edu). These comments will be kept as part of the official meeting minutes.

5:00 PM **Executive Session**

In accordance with ORS 192.660 (2), in accordance with ORS 192.660 (2), (a) employment of a public official

5:30 PM **Call to Order—Business Session**

- Approval of Agenda
- Approval of Minutes—March 19, 2020

5:35 PM **COVID-19 Update**

6:20 PM **Business Session**

**Consent Agenda:** (All items will be approved by consent agenda unless an item is withdrawn by request of a member of the Board. A separate motion will then be required to take action on the item in question.)

**PERSONNEL**

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**Academic Professional Appointments:**

Josh Bouchard, Academic Advising Coordinator, Office  
of the Associate Dean of Student Development,  
Southeast Campus (Temporary)

Katie Brunell, International Student Admissions  
Specialist, Student Affairs

Gabriela Garcia, CAMP Advisor (Community Resource  
Specialist), Office of the Dean of Student  
Development, Rock Creek Campus (NonGeneral  
Fund)

Nereida Macias, College Success Coach (Student  
Resource Specialist), Future Connect, Office of

the Dean of Student Success, Rock Creek  
Campus (NonGeneral Fund)  
Maureen Morgan, Enrollment Services Coordinator,  
Enrollment Services, Student Affairs, Southeast  
Campus (Temporary)

**Administrative Appointments:**

Michael Boggs, Associate Dean, Health Professions  
and Physical Education, Sylvania Campus  
(Temporary)  
Susan Hagemeister-Hardwick, Project Manager,  
Planning and Capital Construction, Capitol Park  
(Temporary)  
Sunnie Ochoa, Accounts Receivable Manager,  
Financial Services, Downtown Center  
(Temporary)

**Faculty Appointments:**

Crystal Cortez, Instructor, Music and Sonic Arts, Arts  
and Professions Division, Cascade Campus  
(Temporary)

**Retirees**

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#### BOARD

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### 6:25 PM      **Adjourn Business Meeting and Convene as Local Contract Review Board**

- Mike Mathews, Manager, Purchasing and Procurement
- Public Comment can be emailed by 4:30 pm to [boardmember@pcc.edu](mailto:boardmember@pcc.edu) and will be recorded as part of the meeting minutes
- Roll Call Vote:
  - 20-133 Accept Proposed Changes to the Community College Rules of Procurement (First Reading)..... 294

### 6:35 PM      **Adjournment Local Contract Review Board**

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The Board of Directors meetings are held in accordance with open meeting laws and accessibility requirements. If a person with a disability needs assistance in order to attend or participate in a meeting, please notify the Board of Director's Office at least 48 hours in advance by calling (971) 722-4365 or by email at [boardmember@pcc.edu](mailto:boardmember@pcc.edu).

Portland Community College Board of Directors  
PO BOX 19000, Portland, Oregon 97280

March 19, 2020  
Via remote access

**BOARD MEETING MINUTES**

**ATTENDANCE**

Hannah Alzgal, Mohamed Alyajouri, Denise Frisbee, Jim Harper, Tiffani Penson, Dan Saltzman, Michael Sonnleitner, Alex Diaz Rios (joined after the approval of the agenda)

**CALL TO ORDER**

Chair Harper called the Business Meeting to order at 5:30 pm.

President Mitsui thanked those in attendance remotely and described the vast efforts faculty and staff have undertaken to move to remote operations of the college.

**APPROVAL OF THE AGENDA**

The agenda was approved as published. Sonnleitner/Alyajouri

Alyajouri – Yes	Harper - Yes	Saltzman – Yes
Frisbee - Yes	Penson – Yes	Sonnleitner – Yes

The February 27, 2020 meeting minutes were approved as published.  
Sonnleitner/Penson

Alyajouri – Yes	Harper - Yes	Saltzman – Yes
Frisbee - Yes	Penson – Yes	Sonnleitner – Yes

**PUBLIC COMMENT ON AGENDA ITEMS**

None

**BUSINESS SESSION**

Chair Harper proposed approval of Resolutions 20-109 to 20-119. Penson/Frisbee

Alyajouri – Yes	Harper - Yes	Sonnleitner – Yes
Diaz Rios – Yes	Penson – Yes	
Frisbee - Yes	Saltzman – Yes	

**PUBLIC COMMENT ON NON AGENDA ITEMS**

None

## **ADJOURNMENT**

There being no further business, the meeting adjourned at 6:05 pm.

\_\_\_\_\_  
Jim Harper, Chair

\_\_\_\_\_  
Mark Mitsui, College President

Prepared by:

\_\_\_\_\_  
Jeannie Moton, Executive Coordinator

Minutes approved on April 16, 2020.

April 16, 2020

20-120

APPROVAL OF PERSONNEL ACTIONS

PREPARED BY: The Human Resources Department Staff

APPROVED BY: Mark Mitsui, College President

RECOMMENDATION: That the Board of Directors approve the following actions:

A. Approval of new hires, new positions and change of position

Academic Professional Appointment (Temporary)– **Josh Bouchard**

Academic Advising Coordinator

Office of the Associate Dean of Student Development, Southeast Campus

Annual Salary: \$53,795 Grade: 4 Step: 4

Effective: March 1, 2020 to August 1, 2020

Applicant Flow: Article 3.64 Appointment

Academic Professional Appointment– **Katie Brunell**

International Student Admissions Specialist

Student Affairs

Annual Salary: \$44,276 Grade: 2 Step: 2

Effective: March 23, 2020

Applicant Flow:

Gender		Ethnicity	
68	Female	2	American Indian or Alaska Native
30	Male	18	Asian
7	Not Disclosed	5	Black or African American
		10	Hispanic/Latino
		0	Native Hawaiian or Other Pacific Islander
		9	Not Disclosed
		11	Two or More Selections
		50	White
		105	Total

Academic Professional Appointment (NonGeneral Fund)– **Gabriela Garcia**

CAMP Advisor (Community Resource Specialist)

Office of the Dean of Student Development, Rock Creek Campus

Annual Salary: \$47,154 + 5% Bilingual Grade: 3 Step: 2

Effective: March 2, 2020

Applicant Flow:

Gender		Ethnicity	
12	Female	3	American Indian or Alaska Native
24	Male	1	Asian
1	Not Disclosed	0	Black or African American



College Success Coach (Student Resource Specialist), Future Connect  
Office of the Dean of Student Success, Rock Creek Campus

Effective: March 2, 2020

## Gender

42	Female	3	American Indian or Alaska Native
17	Male	4	Asian
8	Not Disclosed	5	Black or African American
		4	Hispanic/Latino
		0	Native Hawaiian or Other Pacific Islander
		10	Not Disclosed
		5	Two or More Selections
		<u>36</u>	White
		67	Total

## Enrollment Services Coordinator

Effective: March 4, 2020 to August 20, 2020

Associate Dean

Effective: February 24, 2020 to December 31, 2020

Project Manager

Effective: March 13, 2020 to March 12, 2021

263

Accounts Receivable Manager  
Financial Services, Downtown Center

Annual Salary: \$68,735                      Grade: K  
Effective: March 4, 2020 to December 31, 2020  
Applicant Flow: Direct Appointment

**Faculty Appointment (Temporary)– Crystal Cortez**

Instructor, Music and Sonic Arts

Arts and Professions Division, Cascade Campus

**Annual Salary:** \$299.13 per day                      Step: 1

Effective: March 23, 2020 to June 20, 2020

Applicant Flow: Article 3.64 Appointment

## ETHNIC AND GENDER DESCRIPTION OF STAFF PROPOSED TO BE HIRED IN THE APRIL 16, 2020 PERSONNEL REPORT

Female	6
Male	2
Not Disclosed	1
	<hr/>
	9

American Indian/Alaskan Native	0
Asian	0
Black or African American	0
Hispanic/Latino	3
Native Hawaiian/Pacific Islander	0
Not Disclosed	4
Two or More Selections	0
White	2
	<hr/>
	9

March 19, 2020

20-121

COMMENDATION OF RETIRING EMPLOYEE –  
KELLY BEAZLEY

PREPARED BY: Human Resource Department Staff

APPROVED BY: Mark Mitsui, College President

REPORT: Kelly Beazley has performed faithfully in her duties as a Computing Tech Specialist for Portland Community College since July 21, 1996. She retires effective March 31, 2020.

RECOMMENDATION: That the Board commend her for her service to Portland Community College and wish her well in her retirement years.

April 16, 2020

20-122

COMMENDATION OF RETIRING EMPLOYEE –  
CAROL BUTCHER

PREPARED BY: Human Resource Department Staff

APPROVED BY: Mark Mitsui, College President

REPORT: Carol Butcher has performed faithfully in her duties as a Payroll Specialist and Payroll Lead for Portland Community College since September 25, 1996. She retired effective June 30, 2019.

RECOMMENDATION: That the Board commend her for her service to Portland Community College and wish her well in her retirement years.

March 16, 2020

20-123

COMMENDATION OF RETIRING EMPLOYEE –  
TERRY COUGHRAN

PREPARED BY: Human Resource Department Staff

APPROVED BY: Mark Mitsui, College President

REPORT: Terry Coughran has performed faithfully in his duties as Full-time Custodian, Lead Custodian and Campus Custodial Supervisor for Portland Community College since July 12, 1999. He retires effective February 29, 2020.

RECOMMENDATION: That the Board commend him for his service to Portland Community College and wish him well in his retirement years.

March 19, 2020

20-124

COMMENDATION OF RETIRING EMPLOYEE –  
ELIZABETH RYAN

PREPARED BY: Human Resource Department Staff

APPROVED BY: Mark Mitsui, College President

REPORT: Elizabeth Ryan has performed faithfully in her duties as a Campus Scheduling Coordinator for Portland Community College since May 23, 2002. She retires effective March 28, 2020.

RECOMMENDATION: That the Board commend her for her service to Portland Community College and wish her well in her retirement years.

March 19, 2020

20-125

COMMENDATION OF RETIRING EMPLOYEE –  
ANNA TANNEHILL

PREPARED BY: Human Resource Department Staff

APPROVED BY: Mark Mitsui, College President

REPORT: Anna Tannehill has performed faithfully in her duties as a Campus Scheduling Coordinator, Senior Enrollment Service Specialist, Senior Office Assistant, and an Office Support Series 4 for Portland Community College since September 2, 1997. She retires effective April 17, 2020.

RECOMMENDATION: That the Board commend her for her service to Portland Community College and wish her well in her retirement years.

March 19, 2020

20-126

COMMENDATION OF RETIRING EMPLOYEE –  
LAURA WARD

PREPARED BY: Human Resource Department Staff

APPROVED BY: Mark Mitsui, College President

REPORT: Laura Ward has performed faithfully in her duties as a Energy Resource Manager for Portland Community College since October 04, 2010. She retires effective March 20, 2020.

RECOMMENDATION: That the Board commend her for her service to Portland Community College and wish her well in her retirement years.



April 16, 2020

20-127

SALARY ADJUSTMENT FOR NON-BARGAINING  
UNIT COMMUNITY EDUCATION INSTRUCTORS  
FOR FY 2020-21

PREPARED BY:

Leslie Mestman, Interim Director, Community  
Education

APPROVED BY:

Dr. Karen Sanders, Interim Dean, Continuing and  
Community Education  
Dr. Katy Ho, Vice President, Academic Affairs

REPORT:

In order to be competitive in recruitment and hiring of non-bargaining unit instructors in Community Education (CED) programs, the base rate for instructors needs to be periodically adjusted. Comparative analysis of comparable CED programs at other community colleges shows that PCC's rate of \$24.15 is lower than the range. The CED rate was last adjusted by 2.75% for FY 2016-17; there has not been an adjustment since.

RECOMMENDATION:

That the hourly base rate for Community Education Instructors be increased by 6%, from \$24.15 to \$25.60, and that Community Education programs are hereby authorized to increase pay rates of individual incumbent instructors by up to 6%.

April 16, 2020

20-128

AUTHORIZATION TO AWARD CONTRACT FOR  
FACILITIES PLAN PHASE 2

PREPARED BY: John MacLean, Finance and Procurement Manager,  
Planning and Capital Construction

FINANCIAL  
RESPONSIBILITY: Linda Degman, Director, Planning and Capital  
Construction

APPROVED BY: Sylvia Kelley, Executive Vice President  
Mark Mitsui, College President

REPORT: At the August 2016 Board Meeting the Board approved BA 17-017 for the Facilities Plan Phase 1. Facilities Plan Phase 1 was a comprehensive assessment of existing conditions at all of our campuses and centers. The focus was on eight areas: facility condition assessment, transportation and parking, accessibility, space utilization, safety and security, information technology, sustainability, and capital projects. That work has been completed and the College is ready to move forward with the Facilities Plan Phase 2.

This project will build from the data and assessment conducted in Phase 1 facilities planning to determine appropriate growth capacity and development patterns for each of the College's four campuses and eight centers. This includes ensuring that the college has the necessary space in the appropriate locations to support its mission of equitable student success. In addition, space utilization will be evaluated, sustainable principles incorporated, and a robust and inclusive engagement process followed.

On December 4, 2019 the Request for Proposals (RFP) was advertised in the Daily Journal of Commerce, State of Oregon (ORPIN), and the Portland Observer. A total of thirty (30) firms registered and received a copy of the RFP document. Of these four (4) were COBID registered firms. At the proposal closing time of 2:00 PM January 6, 2020 the College received five (5) proposals one (1) of which was from a COBID registered firm.

The proposals were evaluated based on experience, overall project planning and schedule, subcontracting plan, and social responsibility approach.

After review the three highest scoring proposers were invited for interview.

After the interview process the proposal score and interview were combined and the highest scoring firm Walker Macy is recommended for contract award.

The proposed fee for the work is \$1,899,998 plus a \$100,000 allowance for reimbursables. Staff have reviewed the fee proposal and recommend acceptance.

Walker Macy are an Oregon certified Women Owned Business Enterprise. In addition, three sub-consultants are Oregon COBID certified businesses. At this point Walker Macy are projecting that 62% of the total fee will go to Oregon COBID certified firms. The breakdown is shown below

<b>Certification</b>	<b>Amount</b>
Women Owned Business Enterprises	\$1,001,520
Disadvantaged Business Enterprises	\$203,158

Several firms have multiple certifications and are shown in each category.

**RECOMMENDATION:** That the Board of Directors authorize PCC to award the contract for Facilities Plan Phase 2 to Walker Macy for a amount up to \$2,199,998 including 10% contingency. Funding is from the 2017 Bond Program.

April 16, 2020

20-129

AUTHORIZATION TO AWARD CONTRACT FOR  
PROJECT MANAGEMENT SERVICES FOR THE  
SYLVANIA HEATH TECHNOLOGY BUILDING  
RENOVATION PROJECT

PREPARED BY: John MacLean, Finance and Procurement Manager,  
Planning and Capital Construction

FINANCIAL  
RESPONSIBILITY: Linda Degman, Director, Planning and Capital  
Construction

APPROVED BY: Sylvia Kelley, Executive Vice President  
Mark Mitsui, College President

REPORT: The College has a need for specialized project management services to support the renovation of the HT building at the Sylvania Campus. This is a complex multi-year project that impacts many buildings on the campus. P&CC has a need for a project manager with experience in similar projects.

At the September 2018 Board Meeting the Board approved BA 19-030 to establish a price agreement for Owner Project Management Services. This was a formal RFP process to identify firms able to provide project management services on as needed basis. Two firms were selected as result of that RFP.

Planning & Capital Construction requested Inici Group Inc, one of the firms on this agreement, to provide a proposal for these services. The proposed project manager is a trained architect and has recently completed a project of similar size and complexity at Clackamas Community College. Staff have reviewed the proposal and recommend acceptance. The total cost proposed, including reimbursable expenses, is \$905,132 for services through June 30, 2023. This is maximum price and the College will be invoiced for actual hours used up to this amount.

MWESB participation was sought at the time the price agreement was established. Neither successful firm on

the agreement are MWESB certified.

**RECOMMENDATION:** That the Board of Directors authorize PCC to award the contract for Project Management Services for the Sylvania HT Building renovation to Inici Group Inc for a total amount of \$995,645 including 10% contingency. Funding is from the 2017 Bond Program.

April 16, 2020

20-130

APPROVE AND AWARD A CONTRACT TO D2L LTD. FOR  
THE PURCHASE OF LEARNING MANAGEMENT SYSTEM  
LICENSES AND SYSTEMS SUPPORT FOR ONLINE  
LEARNING

PREPARED BY: Linda Niman, Contracts Lead, MWESB Coordinator,  
Procurement and Contract Services  
Michael Mathews, Manager, Procurement and Contract  
Services

FINANCIAL  
RESPONSIBILITY: Katy Ho, Vice President, Academic Affairs

APPROVED BY: Eric Blumenthal, Vice President, Finance and Administration  
Mark Mitsui, College President

REPORT: Portland Community College (PCC) has a need to purchase Learning Management System (LMS) licenses, hosting, maintenance, and support services. The system is used by PCC instructors to provide online credit and non-credit courses, services, and programs to students. The College has used the D2L Brightspace Learning Management System for the past ten (10) years. The term of the current contract is expiring, and the College has conducted a formal competitive procurement process to assess the available LMS systems to determine which system best meets the needs of the College.

On October 7, 2019, the Request for Proposals (RFP) was advertised in the Daily Journal of Commerce, Oregon Procurement Information Network (ORPIN), and the PCC Solicitation website. By the deadline of November 7, 2019, two (2) proposals were received.

The proposals were reviewed and evaluated by the committee members based on the following criteria:

- proposer's alignment with the College's goals and key initiatives toward equitable student success
- best experience for students and instructors
- company capabilities
- implementation approach
- quality of proposal

- cost

Interviews/Presentations were held, and Sandbox Testing was conducted. Sixty-one (61) faculty, staff, and students were involved in the evaluation process. D2L Ltd. was the highest scoring proposer with their Brightspace LMS platform determined to be the best option for the College.

The annual costs proposed are as follows:

Year	Software and Support Cost
1	\$292,986.90
2	\$293,504.42
3	\$296,439.47
4	\$299,403.85
5	\$302,397.88

The annual software and support costs include an annual increase of 1%.

MWESB Statement: No proposals were received from firms certified by Oregon's Certification Office for Business Inclusion & Diversity.

**RECOMMENDATION:** That the Board of Directors authorize the award of a five (5) year contract to D2L Ltd. for purchasing licenses and support services for its Brightspace Learning Management System. The initial contract term will be through June 30, 2025. The total expenditure for the initial five (5) year contract term is \$1,484,732.52. Funding will be from the General Fund.

April 16, 2020

20-131

AUTHORIZATION TO ISSUE EARLY WORK  
AMENDMENT TO ROCK CREEK CAMPUS  
CONSTRUCTION PROJECTS

PREPARED BY: John MacLean, Finance and Procurement Manager,  
Planning and Capital Construction

FINANCIAL  
RESPONSIBILITY: Linda Degman, Director, Planning and Capital Construction

APPROVED BY: Sylvia Kelley, Executive Vice President  
Mark Mitsui, College President

REPORT: On October 24, 2019 through BA 20-060 the Board adopted the finding, granted an exemption, and authorized the use of the CM/GC alternative contracting method for the Rock Creek Campus projects.

On October 30, 2019 the Request for Proposals (RFP) was advertised in the Daily Journal of Commerce, State of Oregon (ORPIN), and the Portland Observer. A total of seventeen (17) contractors registered and received a copy of the RFP document. Of these none were a COBID registered firm. At the proposal closing time of 2:00 PM December 16, 2019, the College received two (2) proposals none of which were from a COBID registered firm.

The contractor proposals were evaluated based on experience, overall project and schedule, subcontracting plan, social responsibility approach and fee structure.

After review both proposers were invited for interview.

After the interview process the proposal score and interview were combined and the highest scoring firm Pence Construction was awarded the contract with an initial pre-construction fee of \$50,000. This covered working with the selected architects to develop optimal designs for the varied projects. This ability to work with the architects during design is one of the advantages of the CM/GC contracting process.



Pence Construction has committed to at least reaching, and hopes to exceed, the PCC COBID, apprenticeship and workforce diversity goals.

To enable planned work to take place over the summer, primarily the upgrading of the welding shop in Building 2, there is a need to execute an Early Work Amendment (EWA) in advance of the Guaranteed Maximum Price Agreement. The EWA allows work to proceed on the scopes of work that have finalized while allowing design to continue on other work. With the impact of the Coronavirus the work at Rock Creek will now need to be phased over multiple years.

Pence have provided a proposed EWA in the amount of \$3,202,225. P&CC staff have reviewed and recommend acceptance.

Time is of the essence if work is to be carried this summer.

Further Board approval will be requested once the Guaranteed Maximum Price has been established.

**RECOMMENDATION:** That the Board of Directors authorize PCC to issue an Early Work Amendment to Pence Construction in the amount of \$3,522,447 including 10% contingency. Funding is from the 2017 Bond Program.

April 16, 2020

20-132

AUTHORIZATION TO AWARD CONTRACT FOR  
SYLVANIA CHILD DEVELOPMENT CENTER  
MODIFICATIONS

PREPARED BY: John MacLean, Finance and Procurement Manager,  
Planning and Capital Construction

FINANCIAL  
RESPONSIBILITY: Linda Degman, Director, Planning and Capital  
Construction

APPROVED BY: Sylvia Kelley, Executive Vice President  
Mark Mitsui, College President

REPORT: The Sylvania Child Development Center has a need for  
code required modifications to the toddler changing  
rooms. Until this work is completed the CDC is required  
to have extra staff available to monitor the changing  
rooms

This work is time critical and needs to be performed over the  
summer.

Due to the current COVID emergency it is not practical to  
follow the normal procurement processes for this work  
and meet the required schedule.

On March 25, 2020 the College issued an emergency  
declaration for procurement processes.

The College has a general contractor, Lease Crutcher  
Lewis (LCL), under contract to perform the Sylvania  
Health Technologies Building.

LCL are willing and able to perform this work within the  
schedule required. P&CC staff asked LCL to provide an  
estimate which has been reviewed and staff recommend  
that it should be accepted. The proposed cost is  
\$171,356.

LCL have identified a certified Woman Owned Business  
to perform \$50,005 (29.18%) of the work.

RECOMMENDATION: That the Board of Directors authorize PCC to award the contract for the Sylvania Child Care Center Modification to Lease Crutcher Lewis for a fee of \$188,492 including 10% contingency. Funding is from the 2008 Bond Program.

April 16, 2020

20-133

REVISIONS TO BOARD POLICY 2105 (FORMERLY  
REFERENCED AS B202-BOARD OPERATIONS AND  
BYLAWS: STUDENT REPRESENTATION) SECOND  
READING

PREPARED BY: Hannah Alzgal, Chair, District Student Council  
Jeannie Moton, Executive Coordinator, Office of the  
President

FINANCIAL  
RESPONSIBILITY: District Student Council  
Dr. Heather Lang, Vice President, Student Affairs

APPROVED BY: Mark Mitsui, College President

REPORT: On May 19, 2016 the PCC Board of Directors approved Resolution 16-122 for a first reading, allowing ex-officio student representation on the board. A second reading and final approval was on June 16, 2016. The District Student Leaders met to discuss the position and have asked for changes to be made to Board Policy 2105 (202 –Student Representation).

At the March 5, 2020 Work Session, District Student Council Chair (DSC) Chair and Student Board Member Hannah Alzgal presented a proposal from DSC that the two roles be separated. The board was amenable to the separation of duties.

RECOMMENDATION: That the Board of Directors approve the proposal from the DSC to adjust BP2105 (B202) and well as the Memorandum of Understanding as presented in Exhibit D.

## Board Operations & Bylaws - B 202

### PCC / About / Administration / Board / Policies /

The Metropolitan Area Education District was established by the voters of the district at an election held June 6, 1968. The name of the district was changed to Portland Community College District on October 13, 1971. Portland Community College District operates under authority of Oregon Revised Statutes and Oregon Administrative Rules.

### Membership of the Board

The Board of Directors of the Portland Community College District consists of seven members. Members are elected to a four-year term at an election held as specified in ORS 255.355(1). Members shall be elected to represent a zone, and they shall be residents of that zone. (ORS 341.326) The zones within the district are to be as nearly equal in population as feasible according to the latest federal census and are adjusted by the Board following the federal census to reflect population changes. (ORS 341.175) No person who is an employee of Portland Community College may serve on the PCC Board. (ORS 341.275 [2]).

### Term of Office

The term of office of all Board members shall begin on July 1 following the date of their election. Board members shall serve until their successors are elected and qualified. Board members must qualify by taking the oath of office before assuming the duties of office. (ORS 341.326 [4])

## REVISIONS TO BOARD POLICY 2105

### Student Representation

In addition to the seven (7) Board members, there shall be one (1) ex-officio student representative on the Board of Directors to provide for the effective representation of students. The student representative shall be entitled to all the rights, responsibilities, duties, and privileges of a Board member which include: (1) sitting at the dais with the Board during public meetings. (2) participating in discussion and commenting on relevant topics. (3) abiding by the Portland Community College Board of Directors Code of Ethics and all other statutes, rules, and regulations applicable to service on the Board of Directors. The following conditions apply: (1) The student representative may cast an advisory vote on all matters that come before the Board for a vote, but such vote will not count for the purposes of determining whether a vote passes or fails and will not count towards a quorum. (2) The student representative shall not be involved in, have an unofficial vote on, or receive materials pertaining to personnel or legal matters. (3) The student representative shall not participate in, or attend Executive Sessions. (4) The student representative shall not be held responsible for representing constituencies other than the district student body. (C) The student representative shall be a PCC student in good standing. (D) The student shall be hired by processes established by the Associated Students of Portland Community College and shall serve as the ex-officio student representative on the Board for so long as the student complies with the qualifications and requirements for the student representative.

#### Vacancies

When a vacancy occurs on the Board the remaining members shall fill it by appointing a qualified resident of the zone in which the vacancy exists. The member so appointed shall serve until the next regular district election when a successor shall be elected to serve for the remainder of the unexpired term.

A Board member who changes residence from one zone to another zone, or who no longer resides in the zone due to a change in zone boundaries, is entitled to remain as a Board member until June 30 following the next regular board election date at which a successor shall be elected. (ORS 341.335 (2))

#### Officers of the Board

The Board of Directors of the Portland Community College district shall elect one of its members as Chairperson and another as Vice Chairperson at its annual organizational meeting in July. The President of Portland Community College shall serve ex-officio as Executive Officer of the Board. The President may appoint a deputy to assist in that role.

#### Duties of Chairperson of the Board:

Preside at all meetings of the Board.

Call special meetings as required.

Sign the minutes of all regular and special meetings of the Board, and such other documents as may be required by law.

#### Duties of Vice Chairperson of the Board

Preside at Board meetings in the absence of the Chairperson.

Fill other duties of the Chairperson as needed.

#### Legal Counsel, Auditor, Insurance Agent Review

Legal counsel may be appointed by the Board. Legal counsel shall advise the Board on specific legal problems as requested. All requests by an individual Board members for legal opinions from legal counsel shall be made at Board meetings. The Board will review at least once every three years its contracts with legal counsel, auditors and insurance agents.

#### Meetings of the Board

(ORS 341.283) It is the policy of the Board to welcome and encourage the attendance of all interested persons at its meetings. The President or a duly authorized representative shall be present at all meetings of the Board.

#### Annual Organizational Meeting

The Board will hold an annual organizational meeting in July.

#### Regular Meetings

The Board will hold meetings as required by the business of the college and establish regular meeting dates. The date or place of a regular meeting may be changed by action of the Board or by the President or Chairperson provided every member is notified in writing.

#### Special Meetings

Special meetings of the Board shall be called by the Chairperson or upon request of any three members of the Board, or by the President when such action is approved by the Chairperson. Written notices will be given to each Board member by the secretary of the Board at least 24 hours in advance of such meeting. No business may be transacted at any such meeting other than that specified in the call except by unanimous consent of the total Board.

#### Adjourned Meetings

Meetings adjourned to a later time or date may be held, as the business of the Board requires.

#### Executive Sessions

The Board may hold an Executive Session for the purposes authorized under ORS Chapter 192 during a regular, special or emergency meeting, after the Board Chairperson has identified the authorization under ORS 192.610 to 192.690. An executive session means any meeting or any part of a meeting of a governing body that is closed to certain people for deliberations. (ORS 192.610(2)). Executive Sessions may not be held for the purpose of taking any final action or making any final decision.

#### Notice of Meetings

The secretary of the Board shall give written notice of all annual, regular, special or Executive Sessions of the Board in accordance with ORS 192.640. The written notice shall state the time and place of the meeting and the agenda, or a summary thereof, setting forth the subject matter to be considered at the meeting. In the case of annual or regular meetings, the notice should be distributed not more than seven (7) days or less than twenty-four (24) hours prior to the time of the meeting. Notice of Executive Sessions may be included in a notice of an annual, regular or special meeting, or if the meeting is to be solely an executive session notice shall be distributed not less than 24 hours prior to the time of the meeting.

Notice of an Executive Session shall not set forth the specific subject matter to be considered, but may describe in general terms the subject matter. Notice of an Executive Session shall set forth the statutory authority for the Executive Session. Notice of meetings shall be distributed to interested organizations or persons who have requested notice of meetings of the Board. These organizations or persons may include, but not limited to, major newspapers published within the district, radio and television stations located within the district. The Secretary of the Board may make additional distribution as deemed necessary or desirable to insure maximum notice to the public of meetings of the Board.

#### Adjournment Time

Board meetings shall be adjourned by 11 p.m. unless a quorum of the Board members votes to continue the meeting.

#### Quorum

Four members shall constitute a quorum of the Board. In the absence of a quorum, the only business that can be transacted is to take measures to obtain a quorum, to fix the time at which to adjourn, and to adjourn or take a recess. The affirmative vote of at least four members of the Board is required to transact any business.

#### Parliamentary Procedure

Unless otherwise provided by law or by bylaws of the Board, the Board shall follow parliamentary procedures in conducting its meetings.

#### Agenda and Order of Business

The College President shall develop the agenda for regular Board meetings in cooperation with the Board Chairperson. Request for placing items on the agenda shall be given to the President in sufficient time to develop proper informational materials for the use of Board members.

No new business shall be transacted by the Board unless the items are placed on the agenda and relevant information has been delivered to the Board at least twenty-four (24) hours prior to each meeting; except that, upon the concurrence of a quorum of Board members, new business items may be brought up for Board action without the twenty-four (24) hour notice and in accordance with ORS 192.640.

#### Order of Agenda

The order of business at meetings of the Board shall be:

##### Call to Order

Introduction of guests

Approval of minutes of previous meeting(s)

Board Information Session

Board Policy Review (if needed)

Public Comment on Agenda Items

Board Business

Public Comment on Non-agenda Items

Reports (Board members, President, faculty and classified federation, students)

Adjournment

Upon consensus of the Board members present, the Chairperson may deviate from this order of business.

##### Adequate Information to Precede Action

The Board shall strive to ensure that all members have access to full and adequate information prior to action. The Board shall provide the President an opportunity to examine and evaluate all information received by the Board and to recommend action before the Board makes any decision.

#### Citizen Communications with the Board

The Board values input from residents of Portland Community College District. Persons wishing to speak on agenda or non-agenda matters shall notify the Board Secretary prior to the commencement of the meeting and be heard on the agenda at the time



allocated for public comment. Persons requesting to speak on non-agenda items shall be heard following the Board business agenda. Depending upon meeting time restraints, each person will have two to five minutes to speak on such matters unless the Board requests more information. Speakers may offer criticisms of district operations and programs that are of concern to them but, in public session, are advised to refrain from personal complaints against school personnel or any person connected with the district. Supporting a collaborative culture of equity, diversity, and inclusion, the Chair is empowered to insure orderly and civil discourse. The Board Secretary will maintain a file of correspondence received from citizens and will ensure that the file is available for Board member review at all times.

#### Minutes

The Board shall ensure that minutes of all public meetings are kept in accordance with the provisions of ORS 192.610 to 192.690 (Oregon Public Meeting Law).

#### Committees of the Board

##### Standing Committees

No individual members and no group comprised of less than the full membership shall be designated as a permanent committee to perform any of the Board's functions.

##### Temporary Committees

Temporary committees may be established from time to time to conduct Board assignments.

#### Authority of Members

Board members have authority only when acting as a Board legally in session. The Board is not bound by any statement or action of individual Board members, or of employees, except when such statement or action is in pursuance of instruction by the Board.

#### Formulation of Written Policies and Bylaws

The Board will exercise its leadership in the governance of the college through the formulation of written policies and bylaws

The written policies and bylaws adopted by the Board shall serve as guides for their implementation by those to whom the Board delegates authority. The policies and bylaws adopted by the Board shall be recorded in the minutes of the Board and only those so adopted and recorded shall be official policies and bylaws of the Board. Unless circumstances require immediate action, a policy or bylaw shall not be adopted at the first meeting during which it is presented. Recognizing its own functions as the lawful and final authority in policy matters, the Board accepts the principle that those who are affected by a policy or bylaw should be represented in the formation of that policy. The Board encourages staff and administration to review and recommend new policies or changes in existing policy.

The Board shall review its policies on a regular basis.

#### Adoption, Amendment, Repeal and Suspension of Policies and Bylaws

The adoption, amendment, repeal and suspension of policies or bylaws shall be accomplished by roll call vote, which shall be entered in the minutes of the meeting.

#### Adoption

The policies or bylaws of the Board shall be subject to adoption, amendment, repeal or suspension only upon a vote of a quorum of the members of the Board.

#### Board Position on Legislative Matters

The Board shall refrain from taking any position either for or against any local, state or national legislative concern unless that concern is of special interest to the welfare of the college. The Board shall consider and adopt legislative priorities prior to each regular session of the Legislature.

#### Reimbursement of Board Members

(ORS 341.283 [6]) Board members shall receive no compensation for their services, but when on college business, including attendance at Board meetings, will be compensated for their reasonable and necessary expenses.

#### Board Self-Evaluation

The Board shall evaluate its own operation and effectiveness annually.

(May 2016)

## **Memorandum of Understanding**

between

Portland Community College, District Student Council of ASPCC (DSC)

and

Board of Directors for Portland Community College

This Memorandum of Understanding (MOU) sets forth the terms and understanding between District Student Council of ASPCC and Board of Directors for Portland Community College to include an ex-officio student representative on the Board of Directors.

### **Background**

A Portland Community College ex-officio student representative on the Board, in a non-voting capacity, will help to enhance communication and trust between administration and the student body.

### **Purpose**

Student ex-officio membership will enable ongoing dialogue between parties. It will provide a student voice for important issues regarding College business, and will enable a system of communication that is inclusive, representative, and productive. The purpose of this new relationship is to cultivate a comprehensive perspective of the College at both administrative and student levels.

### **Funding**

ASPCC and the College will both be financially obligated to provide necessary training for the student representative as required.

### **Terms**

- The student representative shall serve as the ex-officio student voice on the Board of Directors and otherwise complies with the qualifications and requirements for the student representative set forth in Board Policy B202
- The student representative shall be accountable for compliance with all Legislative and Board of Director specific governing policies and procedures applicable to service on the PCC Board of Directors.

- A MOU, approved by ASPCC Student leaders, ASPCC professional staff, the college president, and the board of directors will be signed at the beginning of term.
- This MOU may be modified by mutual consent of authorized officials from the District Student Council and the PCC Board of Directors.
- This MOU shall become effective upon signature by the authorized officials.
- This MOU is at will and may be terminated by mutual consent or by either party upon 30-day written notice to the other party.

#### Evaluation

At the end of each fiscal year, based on the agreed parameters as stated in Resolutions 20-119, the PCC Board Chair and the student representative will meet to assess student performance and make recommendations.

In the unlikely circumstance that the student representative has not performed to required standards as established in the ORS Oregon Revised Statutes Chapter 341 (as appropriate), the Portland Community College Board of Directors Code of Ethics, and any other statutes, rules, and regulations applicable to service on the Board of Directors the following process may occur as initiated by the Board Chair:

- A meeting will be called between the four (4) ASPCC presidents, at least one (1) ASPCC professional staff, the college president, and the chair and vice chair of the PCC Board of Directors to discuss issues of concern.
- Depending on severity of actions a verbal warning may be given including possible suspension until issues are resolved.
- Student cannot be removed without a meeting between said parties.
- In the event that a student is removed, the DSC retains the right to appoint an alternate for the duration of the term.

#### Contact Information

Portland Community College  
Board of Directors  
Jim Harper  
Board Chair  
PO Box 19000  
Portland, OR 97280  
971.722.4365

Portland Community College  
Office of the President  
Mark Mitsui  
District Student Council  
College President  
PO Box 19000  
971.722.4365

District Student Council  
ASPCC  
Hannah Alzgal  
Chair  
PO Box 19000  
Portland, OR 97280

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

April 16, 2020

20-134

ACCEPT PROPOSED CHANGES TO THE COMMUNITY COLLEGE  
RULES OF PROCUREMENT (FIRST READING)

PREPARED BY: Michael Mathews, Manager, Procurement and Contract Services

APPROVED BY: Dina Farrell, Associate Vice President, Finance  
Eric Blumenthal, Vice President, Finance and Administration  
Mark Mitsui, College President

REPORT: With the concurrence of our legal counsel the College recommends the adoption of the Community College Rules of Procurement (CCRP) as amended by Portland Community College. Adoption of these proposed rules would reinstate the valuable relationship with Participating Oregon Community Colleges (POCC) which is a task force formed of Oregon Community College Association (OCCA) members. These rules are written to work in conjunction with the Attorney General Model Rules and Oregon Revised Statutes 279A, 279B, and 279C.

These proposed contracting rules will align Portland Community College with our fellow Community Colleges in Oregon and allow PCC full access to efficiencies in procurement practices currently in use by public agencies and municipalities based on the Attorney General Model rules which is reviewed by the Oregon Department of Justice.

The following Community Colleges are currently listed as members of the POCC:

Blue Mountain Community College  
Central Oregon Community College  
Chemeketa Community College  
Clackamas Community College  
Clatsop Community College  
Columbia Gorge Community College  
Klamath Community College  
Lane Community College  
Linn-Benton Community College  
Mt. Hood Community College  
Rogue Community College  
Southwestern Oregon Community College  
Umpqua Community College

**The primary changes in the proposed contracting rules include:**

The Attorney General Model Rules are incorporated into the Agreement and thus our rules are up to date as soon as they are released by the Department of Justice.

Increases the current Direct Award amount for Personal Services Contracts from \$50,000 to \$75,000.

Clarifies the Sole Source process allowing the Purchasing Manager to approve findings. Places a time limit on approved Sole Sources which would require a reevaluation after five years.

Aligns the number of quotes required for the informal selection process for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to 3 quotes as in all other informal processes.

Clarification that both the College Procurement and Contract Services Department and the Planning and Capital Construction Purchasing Department may carry out formal procurement processes.

**RECOMMENDATION:** That the Board, in their capacity as the Local Contract Review Board finds that it is in the best interest of the College to adopt the proposed Community College Rules of Procurement (CCRP) to be effective upon second reading and authorize the College to enter into an Intergovernmental Agreement to reinstate it's membership in the Participating Oregon Community Colleges.



# **COMMUNITY COLLEGE RULES OF PROCUREMENT**

**EFFECTIVE MARCH 1, 2005, AND  
AS  
AMENDED AS OF December 3, 2018  
AND EFFECTIVE *insert date*, VERSION 1.8,  
THROUGH BOARD RESOLUTION *insert #***

**ADOPTED IN ACCORDANCE WITH  
ORS 279A.065(5)(a) and ORS 279A.070**

**BY**

**PORTLAND COMMUNITY COLLEGE  
THROUGH  
BOARD RESOLUTION**

**DATED**

**XXX, XX, XXXX**

These Community College Rules of Procurement shall remain in effect unless modified, in writing, and adopted by the College's Local Contract Review Board through Board Resolution.



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*These Community College Rules of Procurement were drafted by participating statewide community college representatives with the intent that Sections 100 and 200 be adopted in their entirety and remain unchanged by their respective institutions unless modified by participating committee members at a later date and subsequently ratified by all their Local Contract Review Boards. Section 300 has been specifically set aside to address the unique philosophies, cultures, and/or concerns of the various community colleges, voting districts, and Local Contract Review Boards. In the event of conflict between rules or sections within these Community College Rules of Procurement, the rules in Section 300 (excluding Appendix A), shall take precedence over the rules in Sections 100 and/or 200 except as otherwise expressly provided in Sections 100 and 200; in all cases, Sections 100, 200, and 300 (excluding Appendix A), shall take precedence over Appendix A.*

***(Insert Your Specific 300 section)***

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Sections 100, 200, and/or 300 (excluding Appendix A), in these Community College Rules of Procurement shall prevail in every instance where there is a conflict or similarity between the Oregon Attorney General's Model Public Contract Rules, (Appendix A), and these Community College Rules of Procurement, effective March 1, 2005, subsequently reviewed/modified pursuant to ORS 279A.065(5)(b). *Rules from the Oregon Attorney General's Model Public Contract Rules that have been identified in the Table of Contents herein but which are shown with a line drawn through them have been stricken and have not been adopted by the College.*

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## SECTION 100 - GENERAL INFORMATION

### Purpose and Statutory Authority

CCR.102

- (1) **Purpose.** These rules prescribe public contract Special Procurements (exemptions), whereby a Local Contract Review Board may approve a special procurement (pursuant to ORS 279B.085), personal services contracting rules, competitive procurement process rules, and supplementary provisions for community colleges, who have formally adopted through board resolution, these Community College Rules of Procurement, hereinafter referred to as Rules or CCRP.
- (2) **Statutory Authority.** These Rules are authorized by Public Contracting Code 279A.050 (*Procurement Authority*), 279A.055 (*Personal Services Contracts*), 279A.060 (*Local Contract Review Boards*), and 279A.070 (*Rules*). All references to PCC shall mean Public Contracting Code as defined in ORS 279A.010(1)(bb). (*Note: Under ORS 279A.065(4), public contracting agencies in Oregon will be operating under the State of Oregon Attorney General's Model Rules unless they have taken special action to opt out and adopt their own contracting rules.*)
- (3) **Participating Oregon Community Colleges.** These Community College Rules of Procurement (CCRP), were drafted through a statewide, collaborative effort by representatives of Participating Oregon Community Colleges (POCC). Pursuant to the POCC participatory agreement, Sections 100 and 200 of the CCRP shall remain unchanged unless modified by the POCC at a later date and subsequently ratified by each institution's Local Contract Review Board. Any member of the POCC that adopts changes to Sections 100 and/or 200 of the CCRP that have not been mutually agreed upon and adopted by all other POCC members, shall by and through its actions, no longer qualify as a member of the POCC cooperative procurement group and shall not represent itself as such.
- (4) **Sustainability Commitment.** In accordance with the Oregon Community College Rules of Procurement, member colleges are committed to the use and purchase of environmentally and socially responsible materials and products, which are fiscally responsible, reduce resource consumption and waste, perform adequately, and promote human health and well-being. Recognizing their regional economic role, colleges shall seek opportunities to educate, encourage, and influence their respective markets by utilizing, where feasible, products and services, including new environmentally preferable products, reusable products, recycled content and recycled products.

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### Definitions for these Community College Rules of Procurement

CCR.104

The following terms, when they appear capitalized in these Community College Rules of Procurement, shall have the meaning set forth below unless otherwise indicated:

- (1) **"Addendum" or "Addenda"** means an addition to or deletion from, a material change in, or general interest explanation of a Solicitation Document.
- (2) **"Auxiliary Funds"** means funds intended to be profit making and/or self-sustaining for providing product or services to the College's customers. (See also "Enterprise Funds.") Examples of Auxiliary Fund or Enterprise Fund operations may include: bookstores; food services; printing services; medical/dental/science stores; student automotive and mechanical stores; and miscellaneous student stores for the resale of books and computers for instruction.
- (3) **"Award" or "Intent to Award"** means, as the context requires, either the act or occurrence of the College's identification of the Person with whom the College will enter into a Contract following the resolution of any protest of the College's selection of that Person, and the completion of all Contract negotiations.
- (4) **"Best Value, Arriving at"** means evaluation or assessment of performance factors and other aspects of service and product quality, as well as pricing, which may include, but not be limited to, combinations of quality, services, time, total cost of ownership considerations, and the probability of the Offeror performing the requirements stated in the Solicitation.
- (5) **"Bid"** means a "Written" response to an Invitation to Bid.
- (6) **"Bidding/Proposing Period"** means the span of time between the date of the Solicitation Document and the time and date set for receipt of Offers. The time period shall be stated in the Solicitation Document. Generally a period of fourteen (14) calendar days shall be provided, but in no case shall the time provided be less than five (5) calendar days.
- (7) **"Closing"** means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

- (8.) **“Code”** means the Public Contracting Code, as defined in ORS 279A.010.
- (9.) **“College”** means Community College District or Community College Service District established under ORS chapter 341, hereinafter known as the specific College whose name appears on the Solicitation Document and/or subsequent Contract and whose Local Contract Review Board has adopted by resolution or ordinance these Community College Rules of Procurement.
- (10.) **“Competitive Range”** means the Offerors with whom the College will conduct discussions or negotiations if the College intends to conduct discussions or negotiations in accordance with its own rules.
- (11.) **“Contract”** means a “Public Contract,” as defined in ORS 279A.010(1)(z), a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. “Public Contract” does not include grants. The “Contract” includes the College’s Solicitation Document and the accepted portions of a Solicitation Document, whether attached or incorporated by reference, between the College and Contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, the College may use “Contract” as meaning a purchase order, price agreement, or other contract document in addition to the College’s Solicitation Document and the accepted portions of a Solicitation Document. If the Contract is for a public improvement or public work, the “Contract” may consist of the College’s Solicitation Document, including any addenda, the general and special and/or supplementary conditions or other conditions governing the work, the accepted portions of the Solicitation Document, the performance and payment bond (if required), certificates of insurance, plans, technical specifications, approved shop drawings, Construction Change Directive or written order for a minor change in the Work, Notice of Award, Notice to Proceed, and any contract amendments, including approved change orders.
- (12.) **“Contract Price”** means, as the context requires, (i) the maximum monetary obligation that the College either will or may incur under a Contract, including bonuses, incentives, approved alternates, and contingency amounts, if the Contractor fully performs under the Contract.
- (13.) **“Contract Review Authority”** means the College’s Local Contract Review Board as set forth in ORS 279A.060.
- (14.) **“Contract Value”** - in determining the applicability of dollar threshold requirements for competitive procurements within these Community College Rules of Procurement, “Contract Value” means the gross amount of goods and/or services procured by or for the College and shall take into consideration, but not be limited to, the following elements: (1) Contract Price; (2) total amount estimated to be generated, if contract is anticipated to be revenue generating; (3) economic value, and (4) total estimated expenses incurred for which the College would be required to report to the Internal Revenue Service (e.g., 1099).
- (15.) **“Contractor”** means the Person with whom the College enters into a Contract and shall be synonymous with “Independent Contractor” (i.e., a person or business that provides services to the College in which the College neither controls nor has the right to control the means or manner by which work is performed). The College may control the results of the services, but not control the means or manner of the Contractor’s performance of the Work.
- (16.) **“Cost”** means not only the product price but also other items of expense such as the actual or reasonably estimated costs related to quality or conversion, and may include such actual or estimated items as shipping, delivery, setup, installation, and training.
- (17.) **“Descriptive Literature”** means “Written” information submitted with the Offer that addresses the Goods and Services included in the Offer.
- (18.) **“Disadvantaged Business Enterprise (DBE)”** means a small business concern pursuant to ORS 200.005(1), which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- (19.) **“Effective Date of Contract”** means the date established in the Contract for the Contractor’s work to begin, or the date the Contract has been fully executed and received all required approvals, whichever date is later.
- (20.) **“Electronic Advertisement”** means notice of the College’s request for Offers or Request for Quotes, available over the Internet via (a) The World Wide Web or some other Internet protocol; or (b) the College’s electronic procurement system.
- (21.) **“Electronic Offer”** means a response to the College’s request for Offers or Request for Quotes submitted to the College via email or through the College’s Electronic Procurement System.

- (22.) **“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 Persons to send Electronic Offers and the College to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a procurement.
- (23.) **“Emergency”** means circumstances that were not reasonably foreseen by the governing body of the College, its President or another officer authorized by the College, and create a substantial risk of loss, damage or interruption of services; a substantial threat to property, public health, welfare or safety of the environment that requires prompt execution of a Contract to remedy the condition or deal with the risk.
- (24.) **“Enterprise Funds”** means funds intended to be profit making and/or self-sustaining for providing product or services to the College’s customers. (See also “Auxiliary Funds.”) Examples of Auxiliary Fund or Enterprise Fund operations may include: bookstores; food services; printing services; medical/dental/science stores; student automotive and mechanical stores; and miscellaneous student stores for the resale of books and computers for instruction.
- (25.) **“Evidence of Competition”** means College documentation demonstrating competitive solicitation of responses/Offer from Person(s) in selecting a Contractor in accordance with the College’s public contracting rules.
- (26.) **“Facsimile”** means electronic equipment that communicates and reproduces both printed and handwritten material.
- (27.) **“Gift”** means something of economic value given to a public official or a relative or member of the household of the public official without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or members of the household of public officials on the same terms and conditions; or for valuable consideration less than that required from others who are not public officials.
- (28.) **“Goods and Services”** or “Goods or Services” have the meaning set forth in ORS 279A.010(1)(j).
- (29.) **“Interstate Agreement”** means any agreement between the College and a unit of local government or state agency of another state.
- (30.) **“Invitation to Bid” (ITB)** means the Solicitation Document issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055 or 279C.335.
- (31.) **“Life Cycle Costing”** means the total cost of ownership, including the total cost of acquiring, operating, maintaining, supporting, and if applicable, disposal.
- (32.) **“Local Contract Review Board” (LCRB)** means the LCRB and/or Board of Education as established by Board resolution or ordinance by each respective College adopting these Community College Rules of Procurement, to serve as its public contract review authority.
- (33.) **“Lowest Responsible Bidder”** as defined in ORS 279A.010(1)(r) means: (a) the lowest bidder whose Offer substantially complies with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public procurement procedures and requirements; or (b) When the Invitation to Bid specifies or authorizes the award of multiple contracts to the responsible bidders, the bidders whose bids substantially comply with the requirements and criteria set forth in the Invitation to Bid and with all prescribed public procurement procedures and requirements and who qualify for the award of a public contract under the terms of the Invitation to Bid. (ORS 279B.055(10); and who has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375, has not been debarred or disqualified by the College under ORS 279B.130 or 279C.440, and is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract. Depending upon the requirements of the Solicitation Document, “Lowest Responsible Bidder” may also mean one who, in the determination of the Advocate for Minority, Women and Emerging Small Businesses, has undertaken both a policy and practice of actively pursuing participation by minority and women-owned business in all bids, both public and private, submitted by such bidder, pursuant to ORS 200.025 and 200.045, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.
- (34.) **“Model Rules”** means the State of Oregon’s Attorney General’s model rules of procedure for Public Contracting, which are set forth in OAR Chapter 137, divisions 46, 47, 48, and 49, and required under ORS 279A.065.
- (35.) **“ORPIN” System:** The on-line electronic Oregon Procurement Information Network (ORPIN) administered through the State Procurement Office of the Procurement, Fleet and Surplus Services Division of the Oregon Department of Administrative Services.
- (36.) **“ORS”** means Oregon Revised Statutes.
- (37.) **“Offer”** means a “Written” offer to provide Goods or Services in response to a Solicitation Document.
- (38.) **“Offeror”** means a Person, who submits an Offer.



- (39.) **“Opening”** means the date, time and place specified in the Solicitation Document for the public opening of Offers.
- (40.) **“PCC”** means Public Contracting Code as it is defined in ORS 279A.010(1)(bb).
- (41.) **“Person”** means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.
- (42.) **“Personal Property”** means everything subject to ownership, which is not real property and has exchangeable value; includes all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools and movable equipment pursuant to ORS 307.020.
- (43.) **“Personal Services Competitive Solicitation”** means a documented process providing an equal and open opportunity to qualified parties, which culminates in a selection based on criteria that include, but are not limited to, the Contractor’s availability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance and fees or costs.
- (44.) **“Personal Services Contract”** or **“Contract for Personal Services”** means a Contract or member of a class of Contracts for Personal Services, other than a Contract for the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100 that the College’s Local Contract Review Board has designated as a Personal Services Contract pursuant to ORS 279A.055, whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of a(n): accountant; physician, dentist or lawyer; educator; information technology professional, travel, banking, investing, collections, or other consultant; broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). “Personal Services” is also defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services or Related Services. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, and or Land Surveying Services, and Related Services are designated as a special class of Personal Services Contracts, defined in ORS 279C.100(5). (See also Personal Services Contracting Rules section within these Community College Rules of Procurement for an expanded definition.)
- (45.) **“Personal Services Contractor”** means an Independent Contractor that performs a Contract for Personal Service(s) for the College, when the College has no right to and does not control the means and manner of performing the contract, except as to the delivery schedule, determining compliance with the Statement of Work, and accepting or rejecting the deliverables or results required under the Contract.
- (46.) **“Prequalification of Offeror”** means a process followed by the College, in advance of issuance of Solicitation Documents, to determine the qualifications of prospective Offerors to perform Public Contracts.
- (47.) **“Product Sample”** means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.
- (48.) **“Proposal”** means a “Written” response to a Request for Proposals.
- (49.) **“Public Contract”** means a sale or other disposal, or a purchase, lease, rental or other acquisition, by the College of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. (ORS 279A.010(1)(z)).
- (50.) **“Public Notice”** means a public notice of Solicitation Document that is published electronically or at least once in at least one newspaper of general circulation in the area where the Contract is to be performed, in at least one trade newspaper of statewide circulation if the Solicitation Document is for a public improvement and the Contract has an estimated cost in excess of \$125,000, and in as many additional issues and publications as the College determines is likely to be cost effective.
- (51.) **“Recycled Materials”** means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).
- (52.) **“Request for Proposals”** or **“RFP”** means all documents used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.110, where proposal evaluation and contract award is based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency, and conformance with the specifications and requirements of the Solicitation Document. Price may be evaluation criterion for an RFP, but will not necessarily be the predominant basis for contract award.

- (53.) **“Request for Qualifications”** means a Written document issued by the College, to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services, or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, described in the document.
- (54.) **“Request for Quotations”** means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.
- (55.) **“Requirements Contract”** means a price agreement that constitutes a firm Offer by the Contractor, regardless of whether any order or purchase has been made or any performance has been tendered under the price agreement and is enforceable for the period stated in the price agreement and is not revocable by the Contractor. A price agreement does not constitute an exclusive dealing commitment on the part of the College or the Contractor unless the price agreement expressly so provides. (ORS 279B.140)
- (56.) **“Responsible”** means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the College under OAR 137-047-0575 or 137-049-0370.
- (57.) **“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 OAR 137-047-0640 or 137-049-0390(2), and that has not been debarred or disqualified by the College under OAR 137-047-0575 or 137-049-0370. When used alone, **“Responsible”** means meeting the aforementioned standards.
- (58.) **“Responsive Offer”** means, as the context requires, a **Responsive Bid** or **Responsive Proposal**, or other 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.
- (59.) **“Service Contract”** means a Contract that calls primarily for a Contractor’s time and effort rather than for an end product
- (60.) **“Signature”** means any “Written” mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a “Written” document to which the Person intends to be bound.
- (61.) **Signed”** means, as the context requires, that a “Written” document contains a Signature or that the act of making a Signature has occurred.
- (62.) **“Solicitation”** means: (a) a request by the College for the purpose of soliciting Offers. This request may take the form of an Invitation to Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or (b) the process of notifying prospective Offerors that the College requests such Offers; or the Solicitation Document itself.
- (63.) **“Solicitation Document”** means an Invitation to Bid, Request for Proposals, Request for Quotations, or other similar document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or 279C. The following are not Solicitation Documents if they do not invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, or a request for product prequalification.
- (64.) **“Special Procurement”** means, unless the context requires otherwise, a Class Special Procurement, a Contract-Specific Special Procurement or both (ORS 279B.085). A “Class Special Procurement” means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services (ORS 279B.085(1)(a)). “Contract-Specific Special Procurement” means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project (ORS 279B.085(1)(b)).
- (65.) **“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. Specifications may be incorporated by reference and/or through attachment to the Contract.

- (66.) **“Standard Fee Contract”** means a contract awarded for service to be performed for a standard fee, when the standard fee is established by the College, and a like Contract is available to all qualified applicants.
- (67.) **“Statement of Work”** means a “Written” statement that specifically describes the phases of Work or services, major tasks, or areas of responsibility the Contractor is to perform at a particular site, or within a particular locale during a stated period of time, according to a schedule of delivery. The statement must identify specific objectives that the Contractor is to attain or describe, in detail, and the deliverables that the Contractor is to provide.
- (68.) **Telecommunications”** means 1-way and 2-way transmission of information over a distance by means of electromagnetic systems, electro-optical systems, or both.
- (69.) **“Work”** means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract or the entire Contract, and successful completion of all duties and obligations imposed by the Contract.
- (70.) **“Writing”** means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. “Writing,” when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.
- (71.) **“Written”** means existing in Writing.

**SECTION 200 - PUBLIC CONTRACT SPECIAL  
PROCUREMENTS General Contract Special Procurements**

**Advertising**

**CCR.202**

The College may purchase advertising regardless of dollar amount without competitive bidding. Where it is determined to be cost effective, the College may publish its public notices electronically, via the college's or other public entity's electronic procurement system or World Wide Web site instead of, or in addition to, a newspaper of general circulation unless otherwise required by law.

**Findings of Fact**

1. By their nature, media sources are generally unique. Advertisements are placed in a particular source because of the specific audience that source serves.
2. Competition to furnish advertising space in daily newspapers of general, trade, or business circulation in the vicinity of the College is limited.
3. Cost savings are difficult to quantify where the sources are unique and not interchangeable. Where the volume of purchases warrants, the College may enter into advertising contracts in accordance with ORS 279B.065 and ORS 279B.070 whenever possible to maximize savings achieved through economies of scale.
4. Public notices may be advertised electronically and/or in a newspaper of general circulation in an effort to increase exposure and generate more widespread competition, except for public improvement contracts with an estimated cost in excess of \$125,000, which must be published in at least one trade newspaper of general statewide circulation (ORS 279C.360). Cost savings for increased competition are difficult to quantify, but the cost to the College for advertising may be significantly reduced where electronic advertising methods are utilized.

**Conclusion of Compliance with Law**

It is unlikely that this Special Procurement will result in favoritism in the awarding of public contracts or substantially diminish competition since all vendors, including Oregon businesses, are able to compete (ORS 279B.085(4)(a)), and it will enable the College to promote the public interest (ORS 279B.085(4)(b)(B)), by expediting its procurement processes while maximizing its circulation efforts and notice of bidding opportunities without compromising integrity for cost.

This rule satisfies the requirements of Oregon Revised Statute 279B.055(4)(c), wherein a Local Contract Review Board may, by rule or order, authorize public notice of bids or proposals to be published electronically instead of in a newspaper of general circulation if it is likely to be cost-effective.

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**Bid Security and Bond Requirements, Waiver of**

**CCR.204**

Pursuant to ORS 279C.390, the College may, at its discretion, exempt certain contracts or classes of contracts from all or a portion of the requirement for bid security and from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance.

The College may waive bid security requirements and/or performance/payment bond requirements pursuant to ORS 279C.390 and this rule under the following conditions:

- (1) If the contract is for a public improvement or a public work and the amount of the contract does not exceed \$75,000 or another threshold as indicated by rule amendment in Section 300, and the contractor has filed a public works bond with the State of Oregon Construction Contractors Board;
- (2) If the contract is not for a public improvement; or if the contract is for a public improvement that resulted from an alternative contracting method and the contract is only for pre-construction services;
- (3) Where bidders are drawn exclusively from a list of certified Emerging Small Businesses maintained by the Advocate for

Minority, Women and Emerging Small Business enterprise certified under ORS 200.055, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225, and the College has been provided funds by the legislature for the purpose of assisting Emerging Small Businesses;

- (4) In cases of emergency, or when the interest or property of the College or the public agency or agencies for whose benefit the contract was awarded probably would suffer material injury by delay or other cause and a declaration of such emergency has been made in accordance with rules adopted under ORS 279A.065.

The College shall not use Bid or Proposal security to discourage competition. The Offeror shall forfeit Bid or Proposal security after award of the contract if the Offeror fails to execute the contract and promptly return it with any required Performance Bond and Payment Bond.

#### **Conclusion of Compliance with Law**

It is unlikely that this Special Procurement will result in favoritism in the awarding of public contracts or substantially diminish competition since all vendors, including Oregon businesses, are able to compete, it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)(b)(A)), and it will enable the College to otherwise substantially promote the public interest (ORS 279B.085(4)(b)(B)), by reducing costs of bidding and maximizing participation from Emerging Small Businesses.

This rule satisfies the requirements of ORS 279C.390 wherein a Local Contract Review Board may exempt certain contracts or classes of contracts from all or a portion of the requirement for bid security and from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance. Consequently, findings otherwise required by law are unnecessary here.

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#### **Cooperative Procurement Participation**

#### **CCR.205**

Examples of cooperative procurement participation may include, but not be limited to: Oregon Cooperative Purchasing Program (ORCPP), Organization for Educational Technology and Curriculum (OETC), Participating Oregon Community Colleges (POCC), National IPA, E&I Coop, NASPO, and US Communities Government Purchasing Alliance.

Pursuant to ORS 279A.205, 279A.210, 279A.215, and 279A.220, contracting agencies may participate in a joint, permissive, or interstate cooperative procurement and/or subsequent contract award resulting from any solicitation which has been accomplished in compliance with ORS, as if said agencies had generated the solicitation and made the award on their own behalf.

#### **Comment**

In general, the results of any solicitation, formal or informal, which has taken place under the requirements of ORS and has resulted in an award, and is current (i.e., not closed, terminated, in abeyance or in default), may be utilized by the College pursuant to ORS 279A.205, 279A.210, 279A.215, and 279A.220. Prior to the College engaging in a cooperative procurement, due diligence must be performed, best practices employed, and factors in the buying decision considered. Examples of these factors include: in-state preferences, legislatively-mandated or LCRB-approved socioeconomic programs that overlay public contracting and accompany the expenditure of public funds; sustainability objectives; administrative resources and capacity; contracting efficiencies; time constraints; member participation costs; and ability to leverage economies of scale.

#### **Conclusion of Compliance with Law**

Cooperative Procurement Participation is not an exemption from the competitive procurement requirements of law; therefore, the College has determined that findings of fact are not required. The awarding of contracts pursuant to this process should “provide effective outcomes that represent optimal value to the College and, to the greatest extent feasible, be consistent with market practices” (ORS 279B.010(1)). Consequently, findings otherwise required by law are unnecessary here.

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**Donated Materials and/or Services****CCR.206**

The College may authorize a Person to perform services and/or provide materials regardless of dollar amount, if:

- (1) The Person has agreed to donate all, or a portion of, the materials and/or services necessary to perform the work; and
- (2) The Person enters into a license or agreement with the College whereby the Person agrees to comply with the public contract requirements applicable to the particular project and any requirements that the College deems necessary or beneficial in order to protect the College.

**Findings of Fact**

1. Students, staff, contractors, and other community groups from time to time offer to donate all or a portion of their professional skilled services and/or materials, to help the College meet its facilities' and/or educational needs. The ability to take advantage of such donated materials and/or services enables the College to use its limited funds in other areas, and frequently results in improvements or services that the College would not otherwise be able to afford. This class special procurement thus has budgetary, operational, and public benefits.
2. This class special procurement enables the College to take advantage of these offers, while continuing to ensure that the requirements of the Public Contracting Code continue to be met.

**Conclusion of Compliance with Law**

It is unlikely that this class special procurement will encourage favoritism in the award of College Contracts or substantially diminish competition for College Contracts, because it will only apply when a Person donates all or part of the materials and/or services. In many instances, the donations are outside of the competitive market for goods and/or services. In many instances, the donations will enable the College to construct or complete projects that it otherwise would not be able to afford to do, and thus will not displace what would otherwise be a competitively solicited project. This class special procurement also substantially promotes the public interest because award of contracts pursuant to the procurement procedures in ORS Chapter 279B is not practicable in the case of donated goods and/or services.

The use of this class special procurement will result in substantial cost savings to the College, because the College is not required to pay for the goods and/or services if they are donated.

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**Emergency Contracts (Including Oil or Hazardous Material Removal)****CCR.207**

- (1) Pursuant to the requirements of this rule, the College may, at its discretion, enter into a public contract without competitive solicitation if an emergency exists. Emergency means circumstances that could not have been reasonably foreseen which create a substantial risk of loss, damage, interruption of services or threat to public health, welfare, or safety, and require prompt execution of a contract to remedy the condition (ORS 279A.010(1)(f)).
- (2) Regardless of the dollar value of the contract, when entering into an emergency contract the College shall:
  - (a) Make a written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the contract, stating the anticipated harm from failure to establish the contract on an expedited basis; and
  - (b) Encourage competition to the extent reasonable under the circumstances; and
  - (c) Record the measures taken under subsection (b) of this section to encourage competition, the amounts of the bids, quotes or proposals obtained, and the reason for selecting the contractor.
- (3) Pursuant to ORS 279B.080, if an emergency exists as defined in subsection (1) of this rule, the Board of Education, its President, or another officer authorized by the College shall declare the existence of the emergency as required by subsection (2) of this rule, which shall authorize the College to enter into an emergency contract.
- (4) The written declaration of an Emergency and resulting contract are solely entered into at the discretion of the College's President or authorized officer.
- (5) If the total award exceeds the threshold for formal public bidding, the Board shall be notified at its next available public meeting and provided with an opportunity to discuss the emergency, the award, and ratification thereof.
- (6) Oil or Hazardous Material Removal: The College 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 466.605 through 466.680 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 has created an emergency condition. In exercising its authority under this exemption:

(a) The College shall:

- (1) 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;
- (2) Make written findings describing the circumstances requiring clean up or a copy of the DEQ order ordering such cleanup;
- (3) 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.

(b) The College shall not contract pursuant to this exemption in the absence of an order from the Department of Environmental

Quality to clean up a site with a time limitation that would not permit hiring a contractor under the usual competitive bidding procedures.

### **Findings of Fact**

1. Under ORS 279B.080, public contracts may be exempted from the requirements of ORS 279B.050 if emergency conditions exist, which require prompt execution of the contract, subject to the additional requirements of ORS 279B.080.
2. ORS 279B.080 allows the Local Contract Review Board to adopt rules to allow the head of the contracting agency or a designated person to declare that an emergency exists and to establish procedures for determining when emergency conditions are present. Subsections (2)(a), (2)(b), and (2)(c) of this rule accomplish this.
3. When DEQ orders a public agency to remove or clean up hazardous material or oil, the public agency must respond within a very short time, which is stated in the DEQ order. This time period does not generally allow the agency to take the time necessary to solicit written bids or proposals for the work to be performed. The College would be liable for any delay in responding to DEQ orders to perform hazardous material removal or clean up.
4. This exemption, as it pertains to subsection (6), will not be used in those situations where there is no DEQ order to remedy the situation. Routine competitive procurement methods will be used where there is no DEQ order to act immediately. The college maintains open lists of vendors, who are interested in providing hazardous materials removal and clean up services. Whenever it needs hazardous material removal or disposal, the College makes use of these lists to solicit quotes, bids, or proposals as needed, in addition to advertising the procurement as required.
5. Cost savings are achieved through this exemption, because the college can be liable for DEQ penalties and fines, if it does not timely remove hazardous materials or oil as ordered. Serious risk in these situations could result in property damage or personal injury, if the College is slow to act.

### **Conclusion of Compliance with Law**

Procurements made by the College in compliance with this exemption meet the requirements of emergency public contracts pursuant to: ORS 279B.050; 279B.080, and 279C.335.

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts as required by ORS 279C.335(2)(a). If the College is under DEQ order to act immediately, the College will still attempt to obtain competitive quotes for the work to be performed as it has the ability and time to do so. Unless the College is faced with the quasi-emergency situation of a DEQ order to remove or clean up hazardous waste or oil, it will follow normal competitive procedures to obtain these services. The award of public contracts pursuant to this exemption will likely result in substantial cost savings to the College in these situations, as required by ORS 279C.335(2)(b), because the College must comply with the law and avoid and minimize risk to persons and property. Where possible, the College will seek competitive quotes for the work to be performed and will award the contract to the lowest, responsive and responsible proposer.

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## **Equipment Repair & Overhaul (Including Maintenance Agreements)**

**CCR.208**

- (1) The College may enter into a public contract for equipment repair, maintenance agreements, or overhaul of equipment without competitive bidding, subject to the following conditions:
  - (a) Service and/or parts required are unknown, and the cost cannot be determined without extensive preliminary dismantling or testing; and/or
  - (b) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source;
  - (c) Maintenance agreements must be procured from the provider of the equipment and/or software being maintained in order to be valid, preserve warranties, provide the best possible service, or conform to other similar agreements being provided by the same provider for maximizing economy and/or servicing functions;
  - (d) The College shall conduct its procurement for equipment repair, maintenance agreements, or overhaul of equipment pursuant to methods and parameters established in (2) of this rule.
- (2) The following limitations shall apply:
  - (a) At the discretion of the College, if it is practical to competitively procure equipment repair, maintenance agreements, or overhaul of equipment using quotations or other forms of Solicitation Documents then these competitive processes shall be utilized. If not, the file should be documented with the reasons for invoking this exemption from competitive procurement, specifically supporting the impracticality of a competitive procurement.
  - (b) If the contract exceeds or is anticipated to exceed the thresholds for Small or Intermediate Procurements as these thresholds are defined in Section 300, the College shall document in its procurement file the reasons why a competitive procurement process was deemed impractical, and the College may directly enter into the contract.

## **Findings of Fact**

The need for equipment repair or overhaul of equipment cannot always be anticipated by College staff. If a piece of equipment is broken or not working properly, the College incurs the cost of down time, possible replacement equipment rental fees, staff time, and other inconveniences or liabilities to its programs.

1. Generally, there are a limited number of vendors, who are able to perform repair or overhaul on a particular piece of equipment, because of its make or manufacture. Sophisticated equipment may require specially trained personnel available from only one source. Often, a piece of equipment will have a partial warranty in place, which will guarantee some savings to the College in the parts and/or labor needed to do the repair or overhaul. This warranty savings may only be achieved if the original manufacturer or provider of the equipment performs the necessary repair or overhaul.
2. The dollar limits on the use of this Special Procurement ensure that when the cost of the equipment repair or overhaul is expected to exceed threshold amounts for Small and Intermediate Procurements as these are defined in Section 300, the College will competitively procure, or if that is not practical or cost effective, declare an emergency or obtain a specific exemption from the president of the College or the president's designee, with notification to the LCRB to proceed with the purchase of the needed repair or overhaul.

## **Conclusion of Compliance with Law**

It is unlikely that this Special Procurement will encourage favoritism in the awarding of public contracts or substantially diminish competition and is reasonably expected to result in substantial cost savings to the College for such contracts as required by ORS 279B.085(4), because the dollar amount of the exempted purchase (i.e., Special Procurement), may not exceed the thresholds established in Section 300 for Intermediate Procurements without additional notification and/or approval from the LCRB and/or the College president or the president's designee. Where it is practical, the College will competitively procure equipment repair, maintenance agreements, and overhaul of equipment; where it is impractical, written justification, provided by the department, will become part of the public record of the contract.

The awarding of public contracts pursuant to this exemption is reasonably expected to result in a cost savings to the College, as required by ORS 279B.085(4)(b)(A), because the College incurs direct and indirect costs from the moment equipment breaks down or becomes unusable. This Special Procurement only applies to equipment already owned by the College. Time is of the essence in contracts for equipment repair, maintenance agreements, and equipment overhaul. The College must be



able to purchase necessary services and parts as quickly as possible in order to minimize equipment down time and provide uninterrupted levels of service to support the College's educational initiatives.

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#### **Federal Contracts, Purchases under**

**CCR.210**

When the price of goods and services has been established by a contract with the federal government pursuant to a federal contract award, the College may purchase the goods and services in accordance with the federal contract. In exercising this authority under this class special procurement, the College must:

- (1) Include in the contract file a memorandum confirming the federal official who granted permission to the College to purchase under the federal contract; and
- (2) Include documentation in the contract file showing the cost savings to be gained from anticipated purchases from the federal contract.

#### **Findings of Fact**

1. Federal contracts for goods and/or services are established by federal agencies with private vendors through competitive processes, which meet the standards of the Public Contracting Code. These processes include open competitive bidding, to which all interested vendors are invited to participate. No Oregon company is excluded from, or disadvantaged in, participation in bidding on federal contracts. Thus the class special procurement has the public benefit of supporting a competitive selection process, while providing the operational and budgetary benefits to the College by avoiding the cost and delay of replicating the solicitation process.
2. The prices or rates for goods and services under federal contracts are based upon competitive bids or proposals. This rule requires the College to document the cost savings to be gained from the anticipated purchase(s) from the federal contract. Documentation might include competitive comparison of previous bid prices obtained from other sources, including local Oregon businesses.
3. This rule requires that the College obtain the permission of both the federal agency and the federal vendor to use the federal contract.

#### **Conclusions of Compliance with the Law:**

This class special procurement will not encourage favoritism or substantially diminish competition in the awarding of College contracts. All vendors, including Oregon businesses, are able to compete for the initial federal contract. Also, the College will not use a federal contract without agency and vendor permission.

This special procurement will result in substantial cost savings to the College. Federal contracts are based on competitive bidding, which result in the most advantageous price to the federal agency. Before it makes a purchase from a federal contract, the College will document the cost savings it will achieve by using the contract. These two facts will ensure that the College purchases the desired goods or services at the best price available. Further, by being able to take advantage of a competitive federal procurement, the College saves the cost of needlessly duplicating the solicitation process.

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#### **Intellectual Property (Periodicals, Library Books, Proprietary Software Licenses, Art, and Other Products of the Creative Process)**

**CCR.212**

If the contract is for the purchase of Intellectual Property, which shall include, but not be limited to, Periodicals, Library Books, Subscription Services, Proprietary Software Licenses, Art, and Other Products of the Creative Process, the College may contract for the purchase of the product(s) without competitive procurement, regardless of dollar amount when the product(s) are protected under copyright law or there is only one known supplier (e.g., manufacturer, copyright holder), available for such products.

Examples of copyrighted materials typically covered by this Special Procurement include, but are not limited to: magazines and other periodicals; textbooks; workbooks; curriculum kits; reference materials; audio tapes; video tapes; calculators such as those used for aircraft navigation; and most software and products of the visual, aural and written arts. It should be noted that if there is more than one supplier of copyrighted materials (especially software), and the product(s) are not being purchased directly from the writer, manufacturer or other original source, every attempt should be made to establish a competitive selection process in order to achieve the greatest economy.

#### **Findings of Fact**

1. By design, Intellectual Property is protected for the use of a single owner. Copyrighted products may not be duplicated by others without the express permission or license of the copyright holder.
2. Instructional initiatives define the various materials, which the college will purchase for use in its educational programs, and it is not uncommon for Intellectual Property to be produced by only one supplier (i.e., sole source), who may be the copyright holder or licensee.

#### **Conclusion of Compliance with Law**

This rule will not encourage favoritism or substantially diminish competition in the awarding of public contracts. The production and distribution of Intellectual Property is controlled by the copyright holder/owner, and may only be permitted through a sole source. This rule provides additional parameters for consideration that are complementary to the Public Contracting Code where competition does exist. It is not intended to diminish the College's ability to consider other factors or limit fair and open competition when arriving at best value. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)).

Additionally, pursuant to ORS 279A.025(2)(h), the Public Contracting Code does not apply to contracts for the procurement or distribution of textbooks; consequently, findings otherwise required by law are unnecessary when the procurement or distribution of Intellectual Property is specifically for textbooks—a subcategory of Intellectual Property.

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#### **Life Cycle Costing/Best Value**

**CCR.216**

- (1) In determining the lowest bid or best proposal, in the award of a contract, the College may use the concept of life cycle costing if it complies with section (2) of this rule:
- (2) (a) At the time of writing specifications for the product, the College shall identify those factors which will have cost implications over the life of the product, and which, for evaluation purposes, will be used to adjust the bid or proposal price of the product;
- (b) The solicitation document shall set out clearly the factors and methodology to be used in life cycle cost adjustments; and
- (c) The results of life cycle costing adjustments shall be applied to the bid or proposal price of the product(s) offered, and the bid or proposal that results in the lowest overall ownership cost or "best value" as it is determined by ORS 279A.015(5), taking into account the life cycle costing adjustments, and other aspects of service and product quality, as well as pricing.

#### **Conclusion of Compliance with Law**

This rule provides additional parameters for consideration that are complementary to the Public Contracting Code while supporting impartial and open competition. It is not intended to diminish the College's ability to consider other factors when arriving at best value. As such, it is not an exemption or Special Procurement to the competitive bidding requirements of law. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)). Consequently, findings otherwise required by law are unnecessary here.

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**Perishables (Chemicals, Food, Laboratory Supplies)****CCR.218**

Competitive procurement need not be used for the procurement of perishables under this Special Procurement provided that the perishability and commensurate quality is of greater importance than the cost to the College.

**Comment**

If longevity is not an issue and multiple sources exist, standard procurement practices shall be utilized.

**Findings of Fact**

This rule permits such items as foodstuffs and scientific supplies, which have definitive shelf lives, and associated attributes such as quality and longevity, to be purchased without strict competitive processes based upon price. Shelf life and the associated attributes may be the determining factors.

The rule enables the buyer to decide on a source based upon time since manufactured, remaining shelf life, and interim quality, since various states of decay can affect the product.

**Conclusion of Compliance with Law**

It is unlikely that this Special Procurement will result in favoritism in the awarding of public contracts or substantially diminish competition, since all vendors, including Oregon businesses, are able to compete, it is reasonably expected to result in substantial cost savings to the College (ORS 279B.085(4)(b)(A)), and it will enable the College to otherwise substantially promote the public interest (ORS 279B.085(4)(b)(B)), through expediting its procurement processes without compromising integrity for cost.

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**Personal Property, Used (Purchase of)****CCR.220**

Competitive procurement need not be used for the procurement of Used Personal Property if the College has determined that the purchase will result in cost savings and will not diminish competition or encourage favoritism.

For purchases of used personal property or equipment costing \$25,000 or more, or an amount otherwise indicated in Section 300, the College shall, where feasible, obtain three competitive quotations, unless such comparisons are highly impractical to obtain. Procurement files pertaining to Used Personal Property shall contain documentation of price comparisons and attempts to secure competitive pricing as much as is practical.

When the value of any such purchase exceeds the threshold for Intermediate Procurements as that threshold is defined herein, Section 300, Supplementary Provisions of the Community College Rules of Procurement, such purchases shall be authorized and/or delegated only by the College President, who shall notify the LCRB of such purchases at the next regularly scheduled meeting of the LCRB.

**Comment**

Used Personal Property is property which has been placed in 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 purchase.

Used Personal Property generally does not include property or equipment of which the College was the previous or current user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

**Findings of Fact**

The additional liberty for purchasing used personal property is essential for those who participate in auctions or other spot sales, where it is impractical to utilize conservative procedures because of the necessities of the selling process.

**Conclusion of Compliance with Law**

This rule provides additional parameters for consideration that are complementary to the Public Contracting Code while supporting impartial and open competition as much as is practical. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent

feasible, be consistent with market practices (ORS 279B.010(1)). Pursuant to ORS 279B.075(1) Used Personal Property may be considered a sole-source procurement, if it is available from only one source; written findings supporting this determination and conclusion shall be made by the College. Findings otherwise required by law to support this Special Procurement are unnecessary here.

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**Price Regulated Items (Including Gas, Diesel Fuel, Heating Oil, Lubricants, Asphalts, Distilled Alcohol, Postage, and Certain Utilities)**

**CCR.222**

The College may, 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 (ORS 279A.025(2)(g) and ORS 279A.025(2)(j)). Regardless of whether fuel is price regulated, it may be procured via *spot purchases*, and such purchases may be combined on a single, written agreement such as an open purchase order between the supplier and the College, in an effort to reduce administrative costs to the College. Spot purchases are defined as one-time purchases occasioned by a small requirement (for example, one vehicle's tankful of gasoline), where the purchase is taking advantage of availability and the most favorable market conditions.

**Comment**

If competition exists and it is practical to solicit quotations, bids, or proposals for Price Regulated Items, then these procurement methods should be utilized in an effort to obtain best value.

**Conclusion of Compliance with Law**

Competition is not generally a relevant issue in the procurement of goods or services where the provider's rate or price of the goods or services being purchased is established by federal, state, or local regulatory authority, and the goods or services are provided through a sole source. Examples include: Postage, Sewer/Water Service, Garbage Service, Electricity, Etcetera. Since there is virtually no competition available within these price regulated items, and/or the amount of the non-regulated fuel acquisitions are *spot purchases* and are subject to market forces and availability, it is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts. Consequently, findings otherwise required by law are unnecessary here.

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**Requirements Contracts**

**CCR.226**

- (1) Requirements contracts, for the purposes of this Rule, mean price agreements, services agreements, and sales that may be established for the purposes of minimizing paper work, achieving continuity of product, securing a source of supply, reducing inventory, combining college requirements for volume discounts, standardization among agencies, and reducing lead time for ordering. The College may enter into requirements contracts whereby it is agreed to purchase supplies and/or services for an anticipated need at a predetermined price provided the contract is let by a competitive procurement process pursuant to the requirements of ORS 279A,B,C and these Rules or is a contract for the procurement of products or services from a qualified nonprofit agency for individuals with disabilities pursuant to ORS 279.850.
- (2) The College may purchase the supplies and/or services from a contractor awarded a requirements contract without first undertaking additional competitive solicitation.
- (3) The term of the contract including renewals, must not exceed the maximum term stated in the original solicitation.

**Conclusion of Compliance with Law**

This rule provides additional parameters for consideration that are complementary to the Public Contracting Code while supporting impartial and open competition as much as is practical. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)). Pursuant to ORS 279A.065(5)(a) and ORS 279A.070, a contracting agency may, in the exercise of authority granted under ORS 279A.050, adopt rules necessary to carry out the provisions of the Public Contracting Code; consequently, findings otherwise required by law are unnecessary when the

College has determined it is in its best interests to purchase supplies and/or services utilizing a competitively procured requirements contract or price agreement.

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#### **Resale—Items for**

**CCR.228**

Competitive procurement processes need not be used for the procurement of product or services being purchased strictly for resale. This Special Procurement applies to products or services that are specifically for resale as opposed to internal use or consumption.

#### **Findings of Fact**

1. College Enterprise, Auxiliary Fund, and/or General Fund operations that compete in the open market need to be able to purchase products or services for resale without undue restrictions.
2. In order to compete in the open market, these operations must be knowledgeable, proactive, and stay abreast of current trends, consumer wants, tastes and desires, and be able to meet those needs in their offerings. Additionally, fund operators must be free to purchase products or services for resale that the consumers want even if it means having a limiting factor such as brand, functionality, price, or quality.
3. These operations must work as efficiently as possible to hold down their own costs as well as to present the goods or services to the public at a fair market price. Thus, they will be looking for the goods for resale at the most competitive prices and highest quality within their parameters.
4. In awarding contracts, these operations must ensure the appropriate amount of the product or service will be in stock or be readily available, received, or provided at the appropriate time. Ensuring that the products or services are available and of the proper freshness and quality may prevent the operation from conducting timely competitive buying.

#### **Conclusion of Compliance with Law**

It is unlikely that this exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition, and it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)). Additionally, this Special Procurement will substantially promote the public interest as required by ORS 279B.085(4)(b)(B), in a manner that could not practically be realized under the requirements of ORS 279B.050, 279B.055, 279B.060, 279B.065, 279B.070 (Methods of Source Selection).

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#### **Telecommunications Services**

**CCR.230**

- (1) In determining the appropriate procurement method for telecommunications services, the College must determine whether competition exists. The College may consider the following factors:
  - (a) The extent to which alternative providers exist in the relevant geographic and service market. The relevant market will vary with the geographic area and from service category to service category, depending on changes in the regulatory environment and competitive marketplace. Thus, the relevant market will depend on the facts and circumstances of each case. For example, an alternative local access service or private line provider might offer services in Portland, but not in Salem or the rest of the state;
  - (b) The extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance. (For example, if the College requires digital services, analog services are not comparable or substitutable, or if the College requires fiber optic technology, then copper, microwave, or satellite transmission technology may not be comparable or substitutable);
  - (c) The extent to which alternative providers can respond to the College's interests in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management, and limiting College liability. For example, to be considered as the College's telephone long distance provider, any long distance service vendor must be able to meet, support, and interface with the College's centralized automated billing

requirements. The College must document for the record the findings on these factors or any other factors used in determining whether competition exists. In developing its findings, the College may solicit the information either through informal telephone or written contacts or through a formal request for information.

- (2) Upon determining that competition does not exist for the relevant service and geographical area, the College may proceed to secure the service on a sole source basis, as described in these Rules.

#### **Findings of Fact**

1. In some cases, the use of competitive procurement processes is either not practicable, advantageous, or in the College's best interest due to unforeseen circumstances, unreasonable costs, difficulty in locating vendors even after extensive searches, or where time constraints occur that are due to circumstances beyond reasonable control.
2. All practical measures will be taken to encourage competition when possible.

#### **Conclusion of Compliance with Law**

It is unlikely that this exemption from competitive procurement processes will encourage favoritism in the awarding of public contracts or substantially diminish competition, and it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)), since it would be an Exception, and would be due to extenuating circumstances. Additionally, this Special Procurement will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065, or 279B.070 or under any rules adopted thereunder. (Stat. Auth: ORS 279B.075 and 279B.085, Sole-Source Procurements and Special Procurements, respectively.)

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### **PERSONAL SERVICES CONTRACTING RULES**

#### **Personal Services Contracts**

**CCR.250**

##### **I. General**

- (1) A Contract for "Personal Services" is a Public Contract that calls for specialized skills, knowledge, and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity, and the ability to exercise sound professional judgment are typically the primary considerations when selecting a Personal Services Contractor, with price being secondary.
  - (a) Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services are designated as a special class of Personal Services Contracts, defined in ORS 279C.100 (5), and that definition applies only to ORS 279C.100 to 279C.125. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services are not subject to the provisions of rule CCR.250 of the Community College Rules of Procurement, but are, instead, subject to the provisions of Division 48 of the *Oregon Attorney General's Model Public Contract Rules* as adopted by the College, and the Community College Rules of Procurement adopted by the College, excluding rule CCR.250.
- (2) The College may waive the requirement for a competitive selection process and directly negotiate a Personal Services Contract, if the Contract Price is not more than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions. Regardless of the dollar value of the contract, the College may, at its discretion, enter into a Personal Services Contract without complying with formal or informal solicitation requirements if an Emergency, as defined in CCR. 207 exists.
  - (a) Unless there are compelling reasons not to do so, competitive selection processes for Personal Services contractors should take place at intervals not greater than five years after initial completion and acceptance of services.
  - (b) The screening and selection procedures for the award of Personal Services Contracts are governed by ORS 279A.055 and are subject to the competitive procurement provisions of the Personal Services Contracting rules and procedures adopted herein. Every contract for Personal Services shall be based upon these screening and

selection procedures developed by the College. Personal Services Contracts are considered "public contracts" as defined in ORS 279A.010.

- (3) The College may enter into Personal Services Contracts with an independent contractor when:
  - (a) The work to be performed requires specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment;
  - (b) The College will not control the means or manner of the contractor's performance, but must rely on the Contractor's specialized skills, knowledge and expertise to accomplish the work. Note: The College's reservation of the right to determine and modify the delivery schedule, evaluate the quality of completed performance, and accept or reject the completed performance does not mean that the College will control the means and manner of performance; and
  - (c) Selecting a Contractor primarily on the basis of qualifications, rather than price, in accordance with the provisions of the Personal Services Contracting Rules and Procedures adopted herein would most likely meet the College's needs and result in obtaining satisfactory contract performance and optimal value for the College.
- (4) Pursuant to ORS 279A.055(2), the College has the authority to designate certain service contracts or classes of service contracts as Personal Services Contracts. Personal Services Contracts may include, but are not limited to, contracts for services performed in a professional capacity such as:
  - (a) Contracts for the services of an accountant;
  - (b) Contracts for the services of an attorney;
  - (c) Contracts for the services of a physician or dentist,
  - (d) Contracts for the services of an information technology consultant,
  - (e) Contracts for the services of a broadcaster;
  - (f) Contracts for services as an artist in the performing or fine arts including, but not limited to, any person identified as a photographer, filmmaker, painter, weaver, or sculptor;
  - (g) Contracts for services that are specialized, creative and research-oriented;
  - (h) Contracts for services as a consultant;
  - (i) Contracts for educational services;
  - (j) Contracts for investment services;
  - (k) Contracts for travel services;
  - (l) Contracts for banking services;
  - (m) Contracts for auditing services;
  - (n) Contracts for student loan and college receivables;
  - (o) Contracts for real estate services (ORS 279A.025(2)(f));
  - (p) Contracts for property management;
  - (q) Contracts for employee benefit insurance (ORS 279A.025(2)(r));
  - (r) Contracts for investments (ORS 279A.025(2)(q)(C));
  - (s) Contracts for energy savings performance contracts (ORS 279C.335(1)(f));
  - (t) Contracts for agents of record (examples where agents of record may be used are advertising, general insurance, sales of surplus property, workers compensation insurance, etcetera);
  - (u) Contracts for speakers, lecturers, and performers;
  - (v) Contracts for human custodial care services;
  - (w) Contracts for food service management;
  - (x) Contracts for telecourse providers;
  - (y) Contracts for actuarial services;
  - (z) Contracts for web design services;
  - (aa) Contracts for branding services;
  - (bb) Contracts for process improvement services;
  - (cc) Contracts for student retention services; and
  - (dd) Contract for Title IX, accessibility, sexual harassment compliance review services.
- (5) Personal Services Contracts do not include:
  - (a) Contracts, even though in a professional capacity, if primarily for equipment, supplies or materials, e.g., a contract to supply all hardware and standard software is not a Personal Services Contract, but a contract with a technology consultant to design or develop a new computer system is a Personal Services Contract;

- (b) Contracts with a temporary service or personnel agency to supply labor, which is of a type that can generally be done by any skilled worker (e.g., janitorial, security guard, crop spraying, laundry, and landscape maintenance service contracts)
- (c) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.

## II. Screening and Selection Procedures and Assistance

These rules set forth procedures for the College to follow when entering into Personal Services Contracts.

- (1) The policy of the College is to select Contractors based on demonstrated qualifications and competence to perform the required services, encourage competition, discourage favoritism and obtain services at a fair and reasonable price. The purpose of this rule is to specify the College's policies and procedures for screening and selection of Contractors to perform Personal Services.
- (2) The College shall comply with the procedures set out in these rules for screening and selecting Contractors to perform Personal Services Contracts.
- (3) The College shall provide Evidence of Competition for all Public Contracts where competition exists or justify entering into contracts by direct negotiation if an exemption from the screening and selection process is utilized. While qualifications are the primary criteria, whenever the College determines that the services offered by two or more individuals or firms are equally able to meet the College's needs and are of equal value, the College shall award the contract to the individual or firm offering the service at the lowest price.
- (4) The College may procure Personal Services from Contractors who are under contract with another governmental entity pursuant to a Cooperative Agreement as permitted and subject to ORS 279A.200 to 279A.225, if such action is Expressly permitted under the original contract and if the administering agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055, 279B.060 or uses a competitive bidding process substantially equivalent to the competitive bidding process in ORS chapter 279C.

### Conclusion of Compliance with Law

The requirements of this rule ensure that competition will be carefully addressed and protected, if the College finds it is in the public's best interest to competitively procure Personal Services. This rule satisfies the requirements of Oregon Revised Statute ORS 279A.055 wherein the College may enter into Personal Services contracts, subsequent to the Local Contract Review Board's designation of certain service contracts or classes of service contracts as personal services contracts. Consequently, findings otherwise required under ORS 279B.030 are unnecessary here.

\* \* \* \* \*

### Solicitation Requirements

**CCR.260**

#### A. General

- (1) All formal solicitations must satisfy the requirements of this rule. Request for Proposals and Request for Qualifications must be in writing and must be advertised in accordance with the following procedures:
  - (a) All advertisements for a formal solicitation shall be placed in at least one publication of general circulation and in as many additional issues and publications as may be necessary or desirable to achieve adequate competition. At the option of the College, the College may publish its public notices electronically instead of, or in addition to, a publication of general circulation. The advertisement(s) for a formal solicitation shall be first published and appear at least once, no fewer than fourteen (14) calendar days before close of the solicitation, unless the governing body of the College, its President, or another officer authorized by the College declares in writing that a shorter period is deemed necessary in the public interest for a particular procurement. Conversely, the College shall broaden and extend public notice if deemed necessary to serve the public's interest for a particular procurement; and
  - (b) All advertisement(s) shall describe, at a minimum, a brief summary of the proposed contract, the services sought, where copies of the solicitation may be obtained, and the deadline for submitting a proposal.
- (2) The Solicitation Document must provide that the College may, at any time during the solicitation process, reject any or all proposals or cancel the solicitation without liability if it is in the public interest to do so.



- (3) Unless compensation is expressly provided for in the Solicitation Document, the Request for Proposals or Request for Qualifications must provide that the College is not responsible for any costs of any Offeror incurred while submitting Offers and that all Offerors who respond to solicitations do so solely at their own expense
- (4) The Solicitation Document must:
  - (a) Notify proposers of potential Solicitation Document addenda. Failure to provide such notice in any solicitation may prevent addenda from being incorporated into any resulting contract, and include protest procedures for all formal solicitation and selection.

B. Formal Selection Procedures

The College shall use a formal selection procedure whenever the cost of the services is estimated or anticipated to be equal to or more than the Intermediate Threshold for Personal Services contracts as this threshold is defined in Section 300-- Supplementary Provisions. Under these formal procedures, Requests for Proposals (RFP) or Requests for Qualifications must be advertised in at least one publication of general circulation or through electronic means as indicated in Section 200, Rule 202, and in as many other issues or electronic procurement systems and publications as may be necessary or desirable to achieve adequate competition.

- (1) Request for Qualifications. A Request for Qualifications may be used to determine whether competition exists to perform the needed services or to establish a list of qualified Contractors prior to issuing an RFP (Note: It is not mandatory that the College issue a Request for Qualifications; it may elect to forego using a Request for Qualifications before issuing an RFP.)
  - (a) At a minimum, the Request for Qualifications shall describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The Request for Qualifications may require information including, but not limited to: the Contractor's particular capability to perform the required services; the number of experienced staff available to perform the required services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information necessary to evaluate Contractor qualifications.
  - (b) A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested Contractors to discuss the proposed services. If the meeting is mandatory, the Request for Qualifications shall include the date, time and place of the meeting(s). Unless the Request for Qualifications establishes that competition does not exist or unless the solicitation process is canceled or all qualification statements rejected, all respondents (who met the published qualifications) shall receive a notice (or other materials as appropriate) of any required services and have an opportunity to submit an Offer in response to the College's subsequent RFP.
- (2) Request for Proposals. The RFP is used as a formal competitive solicitation that describes specific services to be performed within a defined period of time. The solicitation sets forth criteria and methods for screening, selecting and ranking the best proposal(s). The RFP may result in contracts with more than one provider.
  - (a) The RFP must either describe the situation and background for which Offers are being requested and state the outcome(s) desired, or propose a Statement of Work. The RFP must describe any conditions affecting the delivery of the services and the time period in which the services are to be completed. The RFP must, at a minimum, address the following information:
    - (i.) Minimum standards and qualifications required to be met by the Offeror(s) to be eligible to provide the services;
    - (ii.) The evaluation process and criteria to be used to select the Contractor(s), including the weight or points applicable to each criterion. Information must include the manner in which the Offeror's cost and pricing proposal will be evaluated;
    - (iii.) A requirement to provide a list of similar services completed by the proposer(s) with references concerning past performance;
    - (iv.) The closing date and time of the solicitation and the delivery location(s) for proposals;
    - (v.) Reservation of the right to seek clarifications of each proposal, and the right to negotiate the Statement of Work within the scope of work described in the RFP;
    - (vi.) Reservation of the right to reject any or all Proposals, if such rejection would be in the public interest;
    - (vii.) Reservation of the right to cancel the solicitation, if such cancellation would be in the public interest;
    - (viii.) Contractual provisions that will be contained in the resulting contract;

- (ix.) The possibility of interviews; and
  - (x.) Any other information to be used to evaluate, rank and select the best proposer(s). This should include, but is not limited to: anticipated contract award date, and at the College's discretion, funding information and budget requirements.
- (b) A pre-proposal meeting (voluntary or mandatory) may be held for all prospective Contractors to discuss the proposed services, solicitation provisions and contract requirements. The RFP shall include the date, time and place of the meeting(s).
  - (c) An evaluation committee shall evaluate Proposals. The College's Purchasing Department shall provide the evaluation committee with guidelines for completing evaluations consistent with the process described in the RFP. The evaluation committee may consist of College employees and, if desired, members of the community with experience in related services. Evaluators shall be selected on the basis of their ability to provide an objective, impartial evaluation of the proposals. If there is a conflict of interest, the evaluator shall declare this in writing and shall be excluded from participating in the evaluation.
  - (d) The proposal evaluation committee shall review, score and rank all responsive proposals according to the evaluation criteria in the RFP, which may include, but are not limited to, the following:
    - (i.) Availability and capability to perform the work;
    - (ii.) Experience of key staff on comparable projects, or in performing comparable services;
    - (iii.) Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget;
    - (iv.) References from past clients, public and private;
    - (v.) Performance history in meeting deadlines, submitting accurate estimates, producing quality work, and meeting financial obligations;
    - (vi.) Status and quality of any required licensing or certification;
    - (vii.) Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs
    - (viii.) Fees or costs;
    - (ix.) Results from oral interviews, if conducted;
    - (x.) Availability of any specific required resources or equipment;
    - (xi.) Geographic proximity to the project or the area where the services will be performed;
    - (xii.) Identity of proposed subcontractors and their qualifications; and
    - (xiii.) Any other criteria deemed relevant to the provision of services.
  - (e) Final ranking will be based on the evaluation criteria consistent with the process described in the RFP. Price will be considered, but will not necessarily govern selection of the Contractor(s).
  - (f) Contracts entered into under the formal selection procedure may be amended, provided the original contract allows for the particular amendment and the services to be provided under the amendment are included within, or directly related to, the scope of the project or the scope of the services described in the solicitation document.

### C. Informal Selection Procedures

The College may use an informal selection process to obtain services if the estimated fee or Contract Price is less than the Minimum Threshold for Personal Services Contracts, and the College shall use an informal selection process to obtain services if the estimated fee or Contract Price is more than the Minimum Threshold but less than the Intermediate Threshold for Personal Services Contracts as this threshold is defined in Section 300-Supplementary Provision, unless otherwise exempted.

- (1) The informal selection process shall solicit Offers from at least three qualified contractors offering the required services. Prospective contractors may be drawn from the ORPIN System and/or from the certified list of the Advocate for Minority, Women and Emerging Small Business or its list of Contractors. The College may place the solicitation on the ORPIN System and/or use the system-generated potential Offer list to meet the three (3) responses/proposals requirement for informal solicitations.
- (2) The informal selection process shall be competitive. The selection and ranking may be based on criteria including, but not limited to, each Offeror's:
  - (a) Particular capability to perform the services required;
  - (b) Experienced staff available to perform the services required, including each Offeror's recent, current, and projected workloads;

- (c) Performance history
  - (d) Approach and philosophy used in providing services;
  - (e) Fees or costs;
  - (f) Geographic proximity to the project or the area where the services are to be performed; and
  - (g) Work volume previously awarded by the College, with the object of effecting an equitable distribution of contracts among qualified Contractors, provided such distribution does not violate the policy of selecting the most highly-qualified Contractor to perform the services at a fair and reasonable price.
- (3) All proposals received shall be reviewed and documented and the most qualified Contractor(s) selected.
  - (4) If the scope of the services is revised to the extent that the estimated cost of the services is considered to be equal to or more than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions, and the services are still required, the College shall either (a) terminate the contract and issue a new solicitation using the formal selection procedures or procedures allowed by subsequent rules set forth in this Section, unless waived under the provisions of Section CCR.250 (I)(2), or (b) seek approval by the College's Local Contract Review Board for contract amendment.

**D. Selection by Negotiation**

- (1) The College may procure Personal Services with Contractors directly through negotiation if the Contract Price is less than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions.
- (2) If the scope of the services is revised to the extent that the estimated cost of the services is equal to or more than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions, the College shall solicit for a new Contractor(s) using applicable selection procedures under these rules.

**Conclusion of Compliance with Law**

This rule satisfies the requirements of Oregon Administrative Rule 137 chapter 047 wherein the College shall adhere to the informal and formal solicitation requirements. Consequently, findings otherwise required by law are unnecessary here.

\* \* \* \* \*

**PUBLIC IMPROVEMENT CONTRACTS EXCEPTIONS AND EXEMPTIONS**

**Alternative Contracting Methods**

**CCR.280**

The College may, at its discretion, exempt public improvement contracts from competitive bidding requirements utilizing Alternative Contracting Methods (ORS 279C.335(2)). These innovative contracting methods shall take into account market realities and modern practices that are consistent with the public policy of encouraging competition. Examples of Alternative Contracting Methods are Construction Manager/General Contractor Services (CM/GC), and Design-Build, Energy Savings Performance Contracts and other developing methods including but not limited to "performance contracting", "cost plus time" contracting, and "qualification plus project approach" contracting. .

The College shall adhere to ORS 279C.337 regarding the CM/GC contracting requirements as stated in OAR 137-049-0690.

The College shall prepare written findings that support the use of this exemption from competitive bidding and obtain approval from its Local Contract Review Board. A public hearing shall be held before final adoption (ORS 279C.335(5)) of the exemption. The findings must show compliance with ORS 279C.330, and shall include, but not be limited to, information regarding:

- (a) Operational, budget and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;
- (e) Public safety;
- (f) Market conditions;
- (g) Technical complexity; and
- (h) Funding sources but shall not be based solely on funding sources, such as a particular bond fund, or by the method of procurement.

### **Conclusion of Compliance with Law**

The College must demonstrate that the use of this exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for such contracts and will likely result in substantial cost savings to the College or the public (ORS 279C.335(2)). The requirements of this rule ensure that competition will be carefully addressed and protected, if the College's Local Contract Review Board finds it is in the public's best interest to use an Alternative Contracting Method. Consequently, findings otherwise required by law are unnecessary here except with regard to those related to CM/GC contracts as required under ORS 279C.337.

\* \* \* \* \*

### **Donated Public Improvements**

**CCR.281**

The College may authorize a Person to construct a public improvement without competitive bidding or other competitive process regardless of dollar amount, if:

- (1) The Person has agreed to donate all of the labor, materials and services necessary to construct the public improvement and perform the work; and
- (2) The Person enters into a license or agreement with the College whereby the Person agrees to comply with the public contract requirements applicable to the particular project, requirements of the Public Contracting Code, and any requirements that the College deems necessary or beneficial to protect the College.

### **Findings of Fact**

1. Students, staff, contractors, and other community groups from time to time offer to donate all or a portion of their professional skilled services and/or materials, to help the College meet its facilities' and/or educational needs. The ability to take advantage of such donated materials and/or services enables the College to use its limited funds in other areas, and frequently results in improvements or services that the College would not otherwise be able to afford. This class special procurement thus has budgetary, operational, and public benefits.
2. This exemption enables the College to take advantage of these offers, while continuing to ensure that the requirements of the Public Contracting Code continue to be met.
3. ORS 279A.010 excludes projects for which no funds of a public entity are used from the definition of Public Improvement subject to the Code. This exemption will allow the College to take advantage of donated materials and/or services, where all or part of the project or funds used for the project are donated.

### **Conclusion of Compliance with Law**

It is unlikely that this exemption will encourage favoritism in the award of College Contracts or substantially diminish competition for College Contracts because it will only apply when a Person donates all or part of the materials and/or services. Charitable donations are outside of the competitive market for construction services. In many instances, the donations will enable the College to construct or complete projects that it otherwise would not be able to afford to do, and thus will not displace what would otherwise be a competitively bid project.

The use of this class special procurement will result in substantial cost savings to the College because the College is not required to pay for the goods and/or services if they are donated.

\* \* \* \* \*

### **First-Tier Subcontractors; Disclosure and Substitution**

**CCR.282**

This rule amends (i.e., additions are indicated by *italics* and deletions are indicated by a line drawn through the word(s) that has been stricken.), Appendix A of these Community College Rules of Procurement (i.e., State of Oregon, Department of Justice, Model Public Contract Rules effective January 1, 2010, Division 49), as follows:

OAR 137-049-0360(2)(b) shall be replaced with:

*“(b) The College may, at its discretion, Open Bids publicly immediately after the Bid Closing; ~~and~~ or it may open Bids publicly immediately following the deadline for submission of the first-tier subcontractor disclosure forms, or some other time as permitted or not prohibited by Oregon Revised Statutes.”*

### **Conclusion of Compliance with Law**

As this amendment to the Attorney General’s Public Contract Rules is not a Special Procurement or exemption from the competitive procurement requirements of law, the College has determined that findings of fact are not required.

\* \* \* \* \*

## **Limited Negotiations with Bidder**

**CCR.283**

### **I. Definitions**

For purposes of this rule, the terms below shall be defined, as follows:

**“College’s Cost Estimate”** shall mean the fixed limit of construction cost that has been agreed upon by the College and the College’s consultant.

**“Value Engineering and Other Options”** refers to a process agreed upon by the College, which involves the lowest responsive, responsible bidder and may include other consultants to identify deletions or adjustments to the project to reduce the cost of such work.

**“Significantly Changed”** with reference to the scope of the project, shall mean deletion or adjustment of components of the project or elements of the work, which in the aggregate are estimated to cost in excess of twenty-five percent of the College’s Cost Estimate as originally designed.

### **II. Limited Negotiations and College’s Cost Estimate**

- (1) If a project is competitively bid and all the responsive bids from responsible bidders exceed the College’s Cost Estimate, the College may, prior to award, negotiate with the Lowest Responsible Bidder utilizing Value Engineering and Other Options to bring the contract price within the College’s Cost Estimate.
- (2) The College’s negotiation with the Lowest Responsible Bidder shall not result in award of the contract to such bidder if the scope of the project is Significantly Changed from that specified in the Invitation to Bid at the time of bidding.
- (3) If the College elects to use the negotiation process under this rule, the College will not produce for public inspection prior to award or termination of the negotiation process, any records of the Lowest Responsible Bidder. After award of the contract or termination of the negotiation process, the College will make available for public inspection such records as are subject to inspection under any other provision of law.

### **III. Negotiation and Award Process**

- (1) If the Lowest Responsible Bidder’s Bid exceeds the College’s Cost Estimate, the College may, but shall not be required to, negotiate with the Lowest Responsible Bidder to bring the cost of the project within the College’s Cost Estimate.
- (2) If the College elects to negotiate with the Lowest Responsible Bidder, the College shall give written notice to the Lowest Responsible Bidder of its intent, within ten (10) days of bid Opening. The notice shall include disclosure to the Lowest Responsible Bidder of the College’s Cost Estimate.
- (3) During any such negotiations, the Lowest Responsible Bidder’s bid shall remain firm for the period prescribed in the Bid. At all times until such expiration of the Bid, and notwithstanding the occurrence of negotiations under this rule, the College shall have the right to accept the original Bid.
- (4) Upon and within five (5) days of receipt of the College’s notice of intent to negotiate, the Lowest Responsible Bidder and the College’s representative shall meet and present to each other, in writing, any proposals either may have for Value Engineering and Other Options to bring the project within the College’s Cost Estimate.
- (5) The College and the Lowest Responsible Bidder shall negotiate in good faith regarding value engineering and other options, exerting their best efforts to bring the cost of the project within the College’s Cost Estimate.

- (6) If the College and the Lowest Responsible Bidder are able to reach agreement through value engineering and other options to identify measures which bring the project within the college's Cost Estimate, but do not Significantly Change the scope of the project, such value engineering and other options shall be reduced to writing and signed by the Lowest Responsible Bidder as an amendment to its bid and will be incorporated into the Contract at the time of award.
- (7) Upon award, the terms and conditions of the amendment to the Bid shall be made public.
- (8) Any protest of this negotiation process shall be subject to the Protest Process specified in the Invitation to Bid.

**Conclusion of Compliance with Law**

This rule satisfies the requirements of Oregon Revised Statute 279C.340 wherein the College may negotiate with the lowest responsive, responsible bidder in accordance with rules adopted by the College. Consequently, findings otherwise required by law are unnecessary here.

\* \* \* \* \*

**SECTION 300 SUPPLEMENTARY PROVISIONS –  
CONTRACTING RULES**

These Community College Rules of Procurement were drafted by participating statewide community college representatives with the intent that Sections 100 and 200 be adopted in their entirety and remain unchanged by their respective institutions unless modified by participating committee members at a later date and subsequently and unanimously ratified by their Local Contract Review Boards. Section 300 has been specifically set aside to address the unique philosophies, cultures, and/or concerns of the various community colleges, voting districts, and contract review boards. In the event of conflict between rules or sections within these Community College Rules of Procurement, the rules in Section 300 shall take precedence over the Appendices in Section 300, and the rules in Sections 100 and/or 200 except as otherwise expressly provided.

\* \* \* \* \*

**Consultant Selection: Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and  
Providers of Related Services Contracts** **CCR.301**

This rule amends (i.e., additions are indicated by *italics* and deletions are indicated by a line drawn through the word(s) that has been stricken.), Appendix A of these Community College Rules of Procurement (i.e., *Oregon Attorney Generals Model Public Contract Rules Division 48*), as amended from time to time), as follows:

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OAR 137-048-0210(2)(b) shall be replaced with: “Provide a Request for Proposals to a minimum of *three (3)* prospective Consultants drawn from:

- (A) Contracting Agency’s list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);
- (B) Another Contracting Agency’s list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or
- (C) 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.”

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**Conclusion of Compliance with Law**

As this amendment to the Attorney General’s Public Contract Rules, 2012, is not a Special Procurement or exemption from the competitive procurement requirements of law, the College has determined that findings of fact are not required. The requirements of this rule ensure that competition will be carefully addressed and protected, if the College finds it is in the public’s best interest to competitively procure Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services

or Related Services Contracts. This rule satisfies the requirements of Oregon Revised Statute ORS 279A.055 wherein the College may enter into Personal Services contracts, subsequent to the Local Contract Review Board’s designation of certain service contracts or classes of service contracts as personal services contracts, and ORS 279C.105 wherein a Local Contract Review Board shall adopt procedures for the screening and selection of persons to perform those services under ORS 279C.110 or 279C.120. Consequently, findings otherwise required by law are unnecessary here.

\* \* \* \* \*

**Contract Reinstatements**

**CCR.302**

The “Reinstatement of Expired Contracts” means the action of reinstatement of an expired Contract that was previously properly executed containing all the required approval signatures and following all required procurement processes. The College may approve reinstatement of an expired Contract if the following conditions are met:

- (1) The College determines concisely, in writing, that the failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions;

- (2) The written reinstatement justification is presented to Purchasing for approval within ninety (90) days after expiration of the original Contract; and
  - (3) The reinstatement is exclusively for the purpose of permitting completion of the work or services for no additional compensation; or
    - (a) When the services are of a continuing or repetitive nature, which are compensated at an hourly, daily or similar periodic rate, the reinstatement either:
      - (i) Does not increase the rate of compensation; or
      - (ii) Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items), published immediately prior to the date the original contract was established with the same Index published immediately prior to the date of the reinstatement and extension.
  - (4) When a Contract is reinstated pursuant to this Rule, the College may compensate the Contractor, at the rate of compensation established in the original Contract, for work performed in the interim between the expiration of the original Contract and the execution and approval(s) of the extension or amendment.
  - (5) If the reinstatement of a Contract pursuant to this rule raises the aggregate amount of compensation to a level that requires approval by the Local Contract Review Board, the College must obtain such approval before the extension becomes binding and before any services may be performed under the reinstated contract.
  - (6) Once a Contract is reinstated, it is in full force and effect, as if it had not expired.
- Stat. Auth: ORS 279A.065(5)(a); ORS 279A.070

#### **Conclusion of Compliance with Law**

Contracts are living entities. The work they represent is subject to change at any moment; As the contract reinstatement process is not an exemption from the competitive procurement requirements of law, the College has determined that findings of fact are not required. It is unlikely that this process will encourage favoritism in the awarding of public contracts or substantially diminish competition, and is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B(4)). Consequently, findings otherwise required by law are unnecessary here.

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#### **Bid Security and Bond Requirements, Waiver of**

**CCR.303**

This rule replaces and amends Personal Services Contracts Rule CCR.204(1) to read:

- (1) If the contract is for a public improvement or a public work and the amount of the contract does not exceed \$100,000, and the contractor has filed a public works bond with the State of Oregon Construction Contractors Board;

#### **Conclusion of Compliance with Law**

It is unlikely that this Special Procurement will result in favoritism in the awarding of public contracts or substantially diminish competition since all vendors, including Oregon businesses, are able to compete, it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)(b)(A)), and it will enable the College to otherwise substantially promote the public interest (ORS 279B.085(4)(b)(B)), by reducing costs of bidding and maximizing participation from Emerging Small Businesses.

This rule satisfies the requirements of ORS 279C.390 and ORS 279.380(b)(5) wherein a Local Contract Review Board may exempt certain contracts or classes of contracts from all or a portion of the requirement for bid security and from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance. Consequently, findings otherwise required by law are unnecessary here.



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#### **Authority to Approve College Contracts; Delegation of Authority to President**

**CCR.304**

- (1) The College is the Contracting Agency within the meaning of the Public Contracting Code.
- (2) Except as otherwise provided in these Rules, the powers and duties of the Local Contract Review Board under these Rules shall be exercised and performed by the College Board of Directors, and the powers and duties of the College under the Rules shall be exercised and performed by the President.
- (3) Except as provided in Section (4) of this Rule or as otherwise expressly authorized in these Rules, the College Board must approve all College Contracts.
- (4) Pursuant to ORS 279A.075, and except as expressly limited by other Board Policy, the Board delegates to the President the authority to enter into and approve payment on College Contracts in the following circumstances:
  - (a) The College Contract is within appropriations made by the Board; and
  - (b) In any of the following circumstances:
    - (A) The total amount payable by the College under the individual College Contract does not exceed \$150,000;
    - (B) The College Contract is for routine and customary expenditures, including but not limited to payroll, payroll taxes and benefits, utility bills, and postage;
    - (C) Advance authorization has been given by the Board for the President to execute a particular College Contract or class of College Contracts;
    - (D) The College Contract is an Emergency Procurement;
    - (E) The College Contract is a Change Order or Contract amendment to a prior-approved Contract authorized under these Rules;
    - (F) An offer of judgment made in the course of litigation in with the College is a party when the President and general counsel determine that such an offer is in the best interest of the College or is to the College's tactical advantage; or
    - (G) These Rules otherwise expressly authorize the President to approve the Contract.
- (5) The President may designate in writing any College employee or employees to exercise all or a portion of the President's powers and duties under these Rules.
- (6) No College employee or official shall authorize and no contractor shall undertake any work under a College contract prior to full execution of the contract by all authorized signatories. Notwithstanding the forgoing, the President may authorize work to begin under a contract prior to full execution in the following circumstances:
  - (a) The contract is an intergovernmental agreement pursuant to ORS Chapter 190, the parties have agreed in principal to the terms of the contract, and the only remaining step is circulation of the Contract for approval; or
  - (b) The contract is an amendment that is subject to approval of the Board because it will increase the cost of the contract above the President's contract approval authority, but the Board approval process will cause a delay in work completion that will prevent timely delivery of essential services. For the purposes of this exception, "essential services" means goods, services, personal services, or construction services necessary for a school to open on time, a class to start on time, a class or program to complete on time, to comply with conditions of grant that is otherwise at risk of loss, or other services critical to timely and complete education of College students. The President will only authorize such work in cases where the delay is caused by factors outside of the College's control and that could not have been identified when the contract was first negotiated.

#### **Solicitation Requirements**

**CCR.305**

This rule clarifies the definition of College Purchasing Department when used in CCR.260 B. to mean both the College Procurement and Contract Services Department and the Planning and Capital Construction Purchasing Department.

#### **Conclusion of Compliance with Law**

This rule is intended to clarify the language in the indicated CCR. Consequently, additional findings are unnecessary here.

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#### **Energy Management Controls Systems**

**CCR.308**

Competitive procurement need not be used for Energy Management Controls Systems provided the hardware or software is required to match or be specifically compatible with existing equipment (*see Brand Names or Marks, "or Equal," Single Seller and Sole Source*), or that the items are available from only one source and the College has determined that competition does not exist.

In determining the appropriate procurement method for Energy Management Controls Systems or whether competition exists, the College may consider the following factors: the extent to which alternative services offered are comparable or substitutable in technology; service provided; performance; the extent to which latest upgrades and options are offered by the manufacturer; and downward compatibility; and the extent to which alternative providers can respond to the College's interests in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management, and limiting College liability.

#### **Conclusion of Compliance with Law**

This rule will not encourage favoritism or substantially diminish competition in the awarding of public contracts. An energy management controls system is essentially a system of data processors, input/output devices, field devices (thermostats, terminal control units, etc.), and software that result in energy-saving strategies. This rule provides additional parameters for consideration that are complementary to the Public Contracting Code where competition does exist. It is not intended to diminish the College's ability to consider other factors or limit fair and open competition when arriving at best value. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)).

\* \* \* \* \*

#### **Exception (Including Sole Source)**

#### **CCR.310**

Purchases of Goods or Services through competitive procurement processes need not be used for the procurement of goods or services when the College makes a determination, based on written findings subject to ORS 279B.075(2), that the goods or services, or class of goods or services, are available from only one source, and the award of the Contract is approved, in writing, by the College's Purchasing Manager with such determination of sole source being placed on file in the Purchasing office or other designated official location; notification shall subsequently be given to the college's Local Contract Review Board, if the amount of the contract exceeds \$150,000. The College is entitled to negotiate with any sole source Contractor to obtain a favorable price, terms, and/or conditions. This exception may be used for either a Contract or class of goods or services resulting in a series of Contracts, subject to these written findings, without submitting written findings for each subsequent request for a Contract, for no longer than five years, and is to be used infrequently and only when deemed by the College Purchasing Manager to be in the best interest of the College.

#### **Findings of Fact**

1. In some cases, the use of competitive procurement processes is either not practicable, advantageous, or in the College's best interest due to unforeseen circumstances, unreasonable costs, difficulty in locating vendors even after extensive searches, or where time constraints occur that are due to circumstances beyond reasonable control.
2. All practical measures will be taken to encourage competition when possible.
3. The College Purchasing Manager or designee will report to the Local Contract Review Board the reason(s) that competitive procurement processes were deemed to be impracticable and what steps, where possible, were taken to encourage competition if the acquisition exceeds a limit prescribed by these Rules. A copy of the waiver shall be placed on file in the Purchasing office or other designated official location.

#### **Conclusion of Compliance with Law**

It is unlikely that this exemption from competitive procurement processes will encourage favoritism in the awarding of public contracts or substantially diminish competition, and it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)), since it would be an Exception, and would be due to extenuating circumstances. Additionally, this Special Procurement will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065, or 279B.070 or under

any rules adopted thereunder. (Stat. Auth.: ORS 279B.075 and 279B.085, Sole-Source Procurements and Special Procurements, respectively.)

\* \* \* \* \*

### **Personal Services Contracts (CCR.250 Amended)**

**CCR.312**

This rule replaces and amends Personal Services Contracts Rule CCR.250(I).(2) to read:

(2) The College may waive the requirement for a competitive selection process and directly negotiate a Personal Services Contract, if the Contract Price is not more than the Minimum Threshold as this threshold is defined in Section 300-Supplementary Provisions, Rule CCR.312. "Minimum Threshold" means \$75,000; "Intermediate Threshold" means \$150,000. Regardless of the dollar value of the Contract, the College may, at its discretion, enter into a Personal Services Contract without complying with formal or informal solicitation requirements if an Emergency, as defined in CCR.207 exists.

(a) Unless there are compelling reasons not to do so, competitive selection processes for Personal Services contractors should take place at intervals not greater than five years.

(b) The screening and selection procedures for the award of Personal Services Contracts are governed by ORS 279A.055 and are subject to the competitive procurement provisions of the Personal Services Contracting rules and procedures adopted herein. Every contract for Personal Services shall be based upon these screening and selection procedures developed by the College. Personal Services Contracts are considered "Public Contracts" as defined in ORS 279A.010. Pursuant to ORS 279A.010(kk).

(1) Contracts less than or equal to the Minimum Threshold, may be direct awarded or utilize the Informal or Formal Selection Procedure.

(2) Informal Selection Procedures shall be used for contracts estimated or anticipated to be more than the Minimum Threshold, and which are not estimated or anticipated to be more than the Intermediate Threshold.

(3) Formal Selection Procedures shall be used for contracts estimated or anticipated to be more than the Intermediate Threshold, but may be used for contracts of any estimated dollar value if it is deemed to be in the College's best interest.

"Personal services as designated under ORS 279A.055 are excepted from the definition of "Services" and are, therefore, not subject to the Cost Analysis or feasibility determination requirements of ORS 279B.030, 279B.033, or 279B.036.

This rule replaces and amends Personal Services Contracts Rule CCR.250(I).(5) to read:

(5) Personal Services Contracts do not include:

(a) Contracts, even though in a professional capacity, if primarily for equipment, supplies or materials, e.g., a contract to supply all hardware and standard software is not a Personal Services Contract, but a contract with a technology consultant to design or develop a new computer system is a Personal Services Contract;

(b) Contracts with a temporary service or personnel agency to supply labor, which is of a type that can generally be done by any skilled worker;

(c) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures;

(d) Employees or leased employees, except for those professional/managerial, leased employees retained under contract with the College's preferred provider, Northwest Innovations, Incorporated.

(6) If the procurement is grant-funded, "Minimum Threshold" means the amount as identified by the grant-funding agency, if the grant-funding agency's threshold requirements are more restrictive than the College's. The College will follow the provisions of Personal Services contracting rules of the grant-funding agency and/or those of the College, or a combination thereof, as identified by the grantor.

### **Conclusion of Compliance with Law**

The definition of Personal Services Contracts as it is written in CCR.250 excludes employees or leased employees. With the increased number of managerial/professional staff retirements, the College has lost a body of specialized knowledge and has developed an ongoing need for a provider of managerial/professional services in order to provide uninterrupted services to the College. These services are not typically available from other staffing agencies; however, it is desirable to the College to retain this body of experience that would otherwise be lost through retirements. Northwest Innovations, Incorporated (NWI), is uniquely capable of providing short-term professional/managerial employment services to the College, because of its access to a unique pool of managerial/professional employees.

#### **Conclusion of Compliance with Law**

The requirements of Rule CCR.250 and its subsequent amendment, CCR.312, ensure that competition will be carefully addressed and protected, if the College finds it is in the public's best interest to competitively procure Personal Services. This rule satisfies the requirements of Oregon Revised Statute ORS 279A.055 wherein the College may enter into Personal Services contracts, subsequent to the Local Contract Review Board's designation of certain service contracts or classes of service contracts as Personal Services Contracts. Consequently, findings otherwise required by law are unnecessary here.

\* \* \* \* \*

#### **Rejection of an Offer**

**CCR.316**

This rule amends (i.e., additions are indicated by *italics* and deletions are indicated by a line drawn through the word(s) that has been stricken.), Appendix A of these Community College Rules of Procurement (i.e., *Oregon Attorney General's Model Public Contract Rules* Divisions 47 and 49), *as amended from time to time*, follows:

OAR 137-047-0640(1)(b) shall be replaced with:

“(b) The College ~~shall~~ *may* reject an Offer upon the College's finding that the Offer:”

OAR 137-049-0440(1)(b) shall be replaced with:

“(b) The College ~~shall~~ *may* reject an Offer upon the College's finding that the Offer:”

\* \* \* \* \*

#### **Source Selection**

**CCR.317**

This rule amends (i.e., additions are indicated by *italics*), Appendix B of these Community College Rules of Procurement (i.e., *Oregon Attorney General's Model Public Contract Rules* Division 47 as amended from time to time), as follows: OAR 137-047-0250(2) shall be replaced with:

(2) Written Cost Analysis for Contracts for Services. Before conducting the Procurement of a Contract for Services that is subject to sections 2 to 4 of Oregon Laws 2009, chapter 880, the College must, in the absence of a determination under section 34 of that enactment that performing the services with the College's own personnel and resources is not feasible, conduct a Written cost analysis.

(a) This rule applies to a procurement for services—other than personal services designated under ORS 279A.055—that the College estimates will result in one or more Contracts with a value that exceeds \$250,000 for the estimated term of the Contract(s) Value, including incidental costs related to the services, and anticipated amendments, but not unanticipated amendments;

(i) If a procurement is conducted in accordance with these rules, an Award is made, and one or more unanticipated amendments then increase the estimated Contract Value over \$250,000, a Cost Analysis is not required at that time.

**Findings of Fact** The College has specifically opted out of the model rules adopted by the Attorney General and adopted its own rules of procedure for Public Contracting pursuant to 279A.065 in the exercise of its own contracting authority and is not subject to these model rules, except for those portions of the model rules that the College has prescribed for its own use for Public Contracting.

**Conclusion of Compliance with Law** As this amendment to the Attorney General's Public Contract Rules is not a Special Procurement or exemption from the competitive procurement requirements of law, the College has determined that findings of fact are not required.

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**Space Rentals (hotels, conferences, temporary offices, etcetera)**

**CCR.318**

Competitive procurement need not be used for the rental of real estate, floor space or other short- or long-term rentals of physical space.

**Findings of Fact** Many space rental transactions must, of necessity, take place in private in order to ensure that public disclosure will not have negative effects upon price or other contractual considerations. Additionally, rentals are subject to considerable personal judgment in the selection of the space, its availability, its surrounds, its geographical location, the landlord, and the contract terms. Many of these items are not subject to negotiation or are extremely difficult to compare objectively. Moreover, many such rentals must be finalized in extremely short periods, occasionally within minutes, or the arrangement may be lost to another offeror. It is not in the best interest of the public to disadvantage the College by necessitating an arduous selection process for rentals of space, which, of necessity, are highly subjective activities.

**Conclusion of Compliance with Law**

It is unlikely that this Special Procurement will result in favoritism in the awarding of public contracts or substantially diminish competition since all vendors, including Oregon businesses, are able to compete, and it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)), or otherwise substantially promote the public interest (ORS 279B(4)(b)(B)), through expediting its procurement processes without compromising integrity for cost.

\* \* \* \* \*

**Personal Property, Used (Purchase of)**

**CCR.319**

Competitive procurement need not be used for the procurement of Used Personal Property if the College has determined that the purchase will result in cost savings and will not diminish competition or encourage favoritism.

For purchases of used personal property or equipment costing \$25,000 or more, the College shall, where feasible, obtain three competitive quotations, unless such comparisons are highly impractical to obtain. Procurement files pertaining to Used Personal Property shall contain documentation of price comparisons and attempts to secure competitive pricing as much as is practical. When the value of any such purchase exceeds the threshold for Intermediate Procurements, such purchases shall be authorized and/or delegated only by the College Vice President of Finance & Operations.

**Comment**

Used Personal Property is property which has been placed in 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 purchase.

Used Personal Property generally does not include property or equipment of which the College was the previous or current user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

**Findings of Fact**

The additional liberty for purchasing used personal property is essential for those who participate in auctions or other spot sales, where it is impractical to utilize conservative procedures because of the necessities of the selling process.

**Conclusion of Compliance with Law**

This rule provides additional parameters for consideration that are complementary to the Public Contracting Code while supporting impartial and open competition as much as is practical. It is the policy of the State of Oregon that public contracting activities should provide effective outcomes that represent optimal value to the contracting agency, and to the greatest extent feasible, be consistent with market practices (ORS 279B.010(1)). Pursuant to ORS 279B.075(1) Used Personal Property may be considered a sole source procurement, if it is available from only one source; written findings supporting this determination and conclusion shall be made by the College. Findings otherwise required by law to support this Special Procurement are unnecessary here.

\* \* \* \* \*

### **Special Risk Insurance Policies**

**CCR.320**

Types of Special Risk Insurance Policies shall include, but not be limited to, policy/policies for: Accidental Death and Dismemberment for Board of Education Travel; Student Athletic Accident and Injury; College Volunteers; Day Care Students; optional Medical coverage for Students; and International Student (federally mandated), coverage. The College may, at its discretion, exempt Special Risk Insurance Policies from competitive bidding requirements, subject to the following conditions:

The College shall take into consideration market realities and determine:

- (a) Whether comparable benefits/services at competitive prices are available;
- (b) Contractor's ability to assure continuous quality delivery of services;
- (c) If it is cost effective for the College to contract for the direct right for the insurer or the insurer's agent; and
- (d) If applicable, whether Contractor's past performance has been satisfactory.

### **Findings of Fact**

- (1) In some cases, the use of a competitive procurement process is either not practicable, advantageous, or in the College's best interest due to unforeseen circumstances, unreasonable costs, economies of scale, or difficulty in contracting for Special Risk Insurance Policies through the College's competitively procured Insurance Agent of Record;
- (2) In some cases, the College selects the Contractor and makes available Special Risk Insurance Policies as a courtesy to staff/students, but the insurer/insured relationship is between the staff/student and the Contractor--not the College;
- (3) If competition exists and it is practical and cost effective to solicit quotations, bids, or proposals for Special Risk Insurance Policies, then these procurement methods should be utilized in an effort to obtain best value.

It is unlikely that this Special Procurement will result in favoritism in the awarding of public contracts or substantially diminish competition, and it is reasonably expected to result in substantial cost savings to the College or to the public (ORS 279B.085(4)), since multiple contract awards to independent brokers/agents may result, and it will enable the College to otherwise substantially promote the public interest (ORS 279B.085(4)(b)(B)), by minimizing administrative costs, expediting procurement processes, and maximizing efficiencies. The requirements of this rule ensure that competition will be carefully considered, if the College finds it is in the public's best interest to competitively procure Special Risk Insurance Policies.

\* \* \* \* \*

# Board of Directors Goals 2019-2020

## **Diversity, Equity and Inclusion**

Strategic Goal: Ensure that the Board of Directors and the President both advance Diversity, Equity and Inclusion in measurable and strategic ways.

- PCC increases the recruitment, hiring and retention of employees of color.
- PCC increases the awarding of contracts to MWESB companies.
- The PCC Board of Directors will establish and implement a way of including DE & I into the policy making process and other key board functions.

## **Equitable Student Success**

Strategic Goal: The board holds itself and the college president accountable for improving equitable student success.

- PCC improves access, retention, and completion rates for all students and reduces and then eliminates disparities in these rates for low-income students and students of color.
- Board members utilize personal and professional networks to establish new strategic partnerships that bring new resources to the goal of improving outcomes for students (e.g., resources that address student housing and food insecurity, the PCC Campaign for Opportunity, etc.)

## **Mission Fulfillment**

Strategic Goal: Through the development of policy, a strong relationship with the college president and effective public advocacy, ensure that Portland Community College is well positioned to meet the current and future needs of the communities it serves:

- Engage, at the board level, in the PCC Strategic Planning Process and prepare for the board role in the next accreditation visit.
- Continue to engage in coordinated, strategic advocacy with city, county, regional, state and federal governments.
- Continue strategic oversight of critical college performance through the Audit Committee, dashboard review, budget presentations, evaluation of the president, etc.
- Evaluate the PCC President relative to his work plan.

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The PCC Board of Directors met for a retreat on July 26, 2019. From that meeting a working agreement was established. This is that agreement:

- |  |   |
|--|---|
| • Treat each other with respect          | • Plan agenda thoughtfully              |
| • Listen with an empathic mind and heart | • Be prepared                           |
| • Be honest, act with integrity          | • Create a positive working environment |
| • Call in/Call out                       | • Be aware of impact as well as intent  |
| • Conduct effective meetings             | • Stay true to board goals              |
| • Stay engaged                           | • Reference Legacy Goals in meetings    |
| • Start/Stop on time                     |   |

*The College prohibits unlawful discrimination based on race, color, religion, national origin, sex, marital status, disability, veteran status, age, sexual orientation, or any other status protected by federal, state, or local law in any area, activity or operation of the College. The College also prohibits retaliation against an individual for engaging in activity protected under this policy, and interfering with rights or privileges granted under anti-discrimination laws. In addition, the College complies with applicable provisions of the Civil Rights Act of 1964 (as amended), related Executive Orders 11246 and 11375, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 (as amended), Uniformed Services Employment and Reemployment Rights Act ("USERRA"), and all local and state civil rights laws. Under this policy, equal opportunity for employment, admission, and participation in the College's programs, services, and activities will be extended to all persons, and the College will promote equal opportunity and treatment through application of this policy and other College efforts designed for that purpose.*