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12-013

ACCEPT PROPOSED CHANGES TO THE  
COMMUNITY COLLEGE RULES OF PROCUREMENT

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REPORT: On February 24<sup>th</sup>, 2005, in accordance with ORS 279 – the Public Contracting Code the Portland Community College Board adopted Resolution 05-059 adopting the Community College Rules of Procurement (CCRP).

Participating Oregon Community College Purchasing Professionals met in the spring of 2011 to review and update sections 100 and 200 that could be adopted by all Oregon community colleges. These incorporate a statement on sustainability proposed by PCC and the addition of a “spot purchase” option for unregulated fuels.

Section 300 is set aside to address the unique philosophies, cultures, and/or concerns of the various community colleges, voting districts, and contract review boards. The college procurement office in conjunction with Facilities Management Services and the Bond office are proposing the addition of a Small Works Retainer option to section 300 to reduce administrative cost and increase efficiency of small works projects under \$750,000. In addition, staff has also updated references to the intermediate cap which it increased to \$150,000 in FY 11.

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 amendments to the Community College Rules of Procurement to be effective upon adoption.

## Attachment A

### PROPOSED CHANGES TO THE COMMUNITY COLLEGE RULES OF PROCUREMENT DATED JANUARY 19, 2005, FOR ADOPTION IN SUMMER 2011, PENDING BOARD APPROVAL.

(7/14/11)

This document contains *proposed* changes to the Community College Rules of Procurement (CCRP), that were previously revised and formally adopted by PORTLAND COMMUNITY COLLEGE. Note that this document does not contain all of the Community College Rules of Procurement but *only* those rules that contain proposed changes or are new rules.

KEY: Deletions to the current CCRP are highlighted in YELLOW and are shown with a line drawn through them.

Additions are shown in RED and are underlined.

Commentary appears in bold/italics and is *highlighted in gray*. Commentary will not remain in the final, published form of the document after adoption of these proposed changes.

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The current Participating Oregon Community College (POCC), Rules of Procurement can be found at

<http://www.occa17.com/mc/page.do?sitePageId=98519>

*This proposed change to Section 100, the Preamble, demonstrates the college's commitment to protect and restore the natural environment in its community through socially responsible use and reuse of all resources, while meeting its educational goals.*

**Purpose and Statutory Authority**

- (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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*This proposed change is intended to clarify and reiterate that Public Notices for public improvement contracts with an estimated cost in excess of \$125,000 must be published in a newspaper of general statewide circulation.*

**Advertisement Contracts**

CCR.202

The College may purchase advertising, which does not include contracting with advertising agencies, 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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*These proposed modifications are intended to address situations, where the College may need to establish "open Purchase Orders" for small gas purchases at local filling stations in order to achieve efficiencies and minimize administrative costs. Under the CCRP as it is currently written, these "open Purchase Orders" might not be considered "requirements contracts" subject to CCR.226, since they may not have resulted from a predetermined price let by a competitive procurement process.*

#### **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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*This proposed addition to Section 300 allows the College to establish a "Small Works Retainer Program". Small Works Retainer Programs operated within the State have achieved efficiencies and minimized administrative costs. The proposed threshold of \$750,000 was established for the College from historical data and future projections provided by the Colleges FMS department and approved by the Staff.*

## **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 Procedure, 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.

**Cumulative Awards of Small Contracts (i.e., Anti-Fragmenting Rule)** CCR.304  
When the College awards a series of small contracts with values less than \$100,000 the most recent intermediate cap set by Board Resolution, intends to award a series of such contracts, or is likely to award a series of such contracts within one fiscal year, the sum of which will, or is likely to, meet or exceed \$100,000, the most recent intermediate cap set by Board Resolution.

**Insurance Purchases** CCR.305  
Contracts for insurance where either the annual or aggregate premiums meet or exceed \$100,000 the most recent intermediate cap set by Board Resolution must be let by formal competitive bidding or by one of the following procedures:

**Amendment to: Personal Property, Used (Purchase of)** CCR.306  
For purchases of used personal property or equipment costing \$100,000 or the most recent intermediate cap set by Board Resolution more,

**Amendment to: Personal Services Contracting Rules** CCR.312  
“Intermediate Threshold” means \$100,000 the most recent intermediate cap set by Board Resolution.

**Public Contracts Under Certain Dollar Amounts** CCR.314

- (1) The College may, at its discretion, enter into public contracts not to exceed \$100,000 the most recent intermediate cap set by Board Resolution for the purchase of goods, materials,
- (c) When the amount of the contract is more than \$5,000, but less than \$100,000 the most recent intermediate cap set by Board Resolution, defined herein as an “Intermediate Procurement,”
- (2) (c) When the amount of the contract is more than \$5,000, but less than \$100,000 the most recent intermediate cap set by Board Resolution the College shall obtain a minimum of three competitive quotes.

- (d) When the contract is a public improvement contract of less than \$100,000 the most recent intermediate cap set by Board Resolution, and the bidders are being drawn exclusively from a list of certified Emerging Small Businesses maintained by the Office of Minority, Women and Emerging Small Business, the College may let the contract without formal competitive bidding after a good faith effort to obtain a minimum of three competitive quotes from Emerging Small Businesses.
- (e) When the contract is for a "public improvement" as defined in ORS 279A.010(1)(aa) and/or for "public works" as defined in ORS 279C.800(5), and the contract price exceeds \$25,000 but is less than \$100,000 the most recent intermediate cap set by Board Resolution,
- (3) If more than one supplier may be available and the total purchase is estimated to exceed \$100,000 the most recent intermediate cap set by Board Resolution, the College shall select a contractor through a formal competitive solicitation process;
- (4) Pursuant to ORS 279C.105, when the contract is for architectural, engineering, land surveying, and related services, and the Estimated Fee is \$100,000 the most recent intermediate cap set by Board Resolution or greater, the College shall screen and select a contractor through a formal competitive solicitation process.

**Public Contracts under Small Works Retainer Program**

CCR.315

A Small Works Retainer Program (Retainer Program) includes a list of pre-approved consultants and contractors who have already entered into a contract to provide services at a fixed rate of compensation and on certain terms. When the College has a project, it will contact those firms on the retainer to solicit bids and quickly procure and execute a supplement to the contract for that specific project.

"Retainer Contract" means a Contract awarded through a public Small Works Roster Request for Proposals or Invitation to Bid, whereby multiple Contractors are authorized to provide specific supplies or equipment to or perform specific services for the College. Contractors on a Retainer Contract may provide goods or services on a non-exclusive and as-needed basis.

The College can issue retainer contracts to facilitate cost savings and other efficiencies when performing small capital construction projects. Small projects are defined as construction projects under \$750,000 for professional consulting services, and under \$750,000 for construction services (including asbestos abatement and lead and silica abatement). The College will maintain Retainer Contracts for Professional Consultants, Construction-Related Services, and any other service that may from time to time benefit the College. The Retainer Contracts will be established in accordance with this subsection.

Each Biennium

(1) The College will evaluate its options to either 1) enter into a contract with the Oregon University System to access its Retainer Program or; 2) issue its own Request for Proposal to consultants and contractors, inviting participation into a Retainer Program for:

- \* Construction Related Services
- \* Professional Consultants

Contractors that meet the minimum qualifications and have not been disbarred or disqualified by an agency of the State of Oregon as outlined in OAR 580-061-0160, may be offered a Retainer Contract to be listed on the respective retainer program to provide services in a non-exclusive and on an as-needed basis.

(2) The College will submit for Board approval a list of consultants and contractors to be awarded retainer contracts and establish its Retainer Program Contractors for the biennium.

Each Fiscal Year

(1) College and/or the College Bond Program may submit for Board approval a list of Small Works projects under consideration for that fiscal year, including a not to exceed aggregated expenditure authority.

(2) Upon execution of individual Small Works projects College will request quotes from a minimum of three Retainer Contractors including at least one of which is also an MWESB. The Retainer Contractors proposal representing the "Best Value" to the College will be awarded an amendment to execute the project.

(3) At the conclusion of each Fiscal Year College will provide the Board with a report detailing: the small works projects completed; the Retainer Contractors awarded components of each project; and the final expenditure under each award.

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