

DRAFT
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125-247-0110
Cost Analysis and Supplier Responsibility

(1) Cost Analysis of Services, Exceptions, and Decision-Making.

(a) Application and Definition. Section (1) applies to Authorized Agencies. "Services" has the meaning as defined in OAR 125-246-0110.

0010 #25

(b) Cost Analysis. Before a Authorized Agency may conduct procurement, or request or authorize a procurement on the Authorized Agency's behalf, for Services with an estimated contract price that exceeds \$250,000, the Authorized Agency must perform a written cost analysis in accordance with HB 2867 and Section (1)(c) below (Cost Analysis). The Cost Analysis must demonstrate:

- (A) That contracting out the Services would cost less than performing the Services with the Authorized Agency's own staff; or
- (B) Performing the Services with the Authorized Agency's own staff and resources is not feasible.

(c) Exceptions. Section (1)(b) does not apply to:

- (A) A local contracting agency or a local contract review board for a city that has a population of not more than 15,000 or a county that has a population of not more than 30,000;
- (B) A community college that enrolls not more than 1,000 full-time equivalent students, as defined in ORS 341.005;
- (C) A special district, as defined in ORS 198.010, a diking district formed under ORS Chapter 551 and a soil and water conservation district organized under ORS 568.210 to 568.808;
- (D) The Port of Portland; or
- (E) Procurements for Client Services as defined on August 4, 2009, in OAR 125-246-0110, as follows: "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):
 - (i) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;
 - (ii) Sustenance, including clothing;
 - (iii) Employment training or Skills training to improve employability;
 - (iv) Services for people with disabilities;
 - (v) Foster care or foster care facilities;
 - (vi) Residential care or residential care facilities;
 - (vii) Community housing;
 - (viii) In-home care including home delivered meals;
 - (ix) Medical care, services and treatment, including but not limited to:
 - (I) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

- (II) Alcohol and drug treatment;
- (III) Smoking cessation;
- (IV) Drugs, prescriptions and non-prescription;
- (V) Nursing services and facilities;
- (VI) Transportation or relocation;
- (VII) Quality of life, living skills training; or
- (VIII) Personal care; or
- (IX) Legal services and expert witnesses services;
- (X) Religious practices, traditions and services, separately or in any combination thereof; and
- (XI) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(d) Process for Cost Analysis. Authorized Agencies must complete the Cost Analysis before a Procurement in accordance with HB2867(3). In the required Cost Analysis, the Authorized Agency must:

(A) Agency's Costs. Estimate the Authorized Agency's cost of performing the Services, including:

- (i) Employees' Salaries or Wages and Benefits. Salary or wage and benefit costs for Authorized Agency employees who are directly involved in performing the Services, including employees who inspect, supervise or monitor the performance of the Services.
- (ii) Material Costs. Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies.
- (iii) Direct Costs. Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the Services and costs related to stopping and dismantling a project or operation because the Authorized Agency intends to procure a limited quantity of Services or procure the Services within a defined or limited period of time.
- (iv) Miscellaneous Costs. Miscellaneous costs related to performing the Services.
- (v) No Indirect Overhead Costs. The Authorized Agency may not include in the Cost Analysis the Authorized Agency's indirect overhead costs for existing salaries or wages and benefits for administrators or for rent, equipment, utilities and materials except to the extent that the costs are attributable solely to performing the Services and would not exist unless the Authorized Agency performs the Services.

(B) Contractor's Costs. Estimate the cost a potential contractor would incur in performing the Services, including:

- (i) Contractor's Salaries or Wages and Benefits. Average or actual salary or wage and benefit costs for contractors and employees who:
 - (I) Work in the industry or business most closely involved in performing the Services that the Authorized Agency intends to procure; and
 - (II) Would be necessary and directly involved in performing the Services or who would inspect, supervise or monitor the performance of the Services;
- (ii) Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies; and

(iii) Miscellaneous costs related to performing the Services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection over the expected duration of the Procurement.

(C) Conclusions.

(i) After comparing the difference between the Authorized Agency's costs estimated as provided in subsection (d)(A) with the Contractor's costs estimated as provided in subsection (d)(B), except as provided in subsection (d)(D) below, the Authorized Agency may proceed with the Procurement only if the Authorized Agency would incur more cost in performing the Services with the Authorized Agency's own personnel and resources than the Authorized Agency would incur in procuring the Services from a Contractor.

(ii) The Authorized Agency may not proceed with the Procurement if the sole reason that the Contractor's costs estimated in subsection (d)(B) are lower than the Authorized Agency's costs estimated in subsection (d)(A) is because the costs of Contractor's salaries or wages and benefits estimated in subsection (d)(B)(i) are lower than the Authorized Agency's costs for salaries or wages and benefits estimated in subsection (1)(a)(A) of this section.

(D) Exception for Agency's Lack of Resources. A Authorized Agency may proceed with a procurement even if the Authorized Agency determines that the Authorized Agency would incur less cost in providing the Services with the Authorized Agency's own personnel and resources if at the time the Authorized Agency intends to conduct a procurement, the Authorized Agency lacks personnel and resources that are necessary to perform the Services within the time in which the Services are required. If the Authorized Agency conducts a procurement under the conditions described in this paragraph, the Authorized Agency must:

(i) Keep a record of the cost analysis and findings that the Authorized Agency makes for each procurement the Authorized Agency conducts under this section, along with the basis for the Authorized Agency's decision to proceed with the procurement; and

(ii) Collect and provide copies of the records described in subparagraph (A) of this paragraph each calendar quarter to the local contract review board, or if an Authorized Agency, to the Emergency Board.

(E) In addition to complying with the provisions of subsection (d)(D), the Authorized Agency must prepare a request to the Governor for an appropriation and any authority that is necessary for the Authorized Agency to hire personnel and obtain resources necessary to perform the Services that the Authorized Agency procured under the conditions described in subsection (d)(D). The request must include a copy of the records that the Authorized Agency provided to the Emergency Board under subsection (d)(D)(ii).

(e) Public Record. A cost analysis, record, documentation or determination made under this section is a public record.

(f) Decision-Making.

(A) Determination. An agency may proceed with a services procurement that exceeds \$250,000 without conducting a written cost analysis if the agency determines in writing that using the Authorized Agency's own personnel or resources to perform the Services that the Authorized Agency intends to procure is not feasible.

(B) The Authorized Agency may make the determination described in subsection (1)(f)(A) without conducting a Cost Analysis if the Authorized Agency finds that:

(i) Deficiencies. The Authorized Agency lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the finding, the Authorized Agency must compare the Authorized Agency's capability, experience or expertise in the field most closely involved in performing the Services with a potential contractor's capability, experience or expertise in the same or a similar field.

(ii) Special Circumstances. Special circumstances require the Authorized Agency to procure the Services by contract. Special circumstances may include, but are not limited to, circumstances in which:

(I) The terms under which the Authorized Agency receives a grant or other funds for use in a Procurement require the Authorized Agency to obtain Services through an independent contractor;

(II) Other state or federal law requires the Authorized Agency to procure Services through an independent contractor;

(III) The Procurement is for Services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;

(IV) The Authorized Agency cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using the Authorized Agency's existing personnel or persons the Authorized Agency could hire through a regular or ordinary process would not be suitable;

(V) The Procurement is for Services to which the provisions of ORS 279B.080 apply;

(VI) The Procurement is for Services, the need for which is so urgent, temporary or occasional that attempting to perform the Services with the Authorized Agency's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the Services; or

(VII) The Services that the Authorized Agency intends to procure will be completed within six months after the date on which the contract for the Services is executed.

(C) Public Record. A finding or determination and supporting documentation for a finding or determination made under this section is a public record.

(D) All written determinations required in this section (1)(f) should be made a part of the Procurement File in accordance with OAR 125-246-0556

(2) Department Evaluation and Report

(a) Application. Section (2) applies to all public bodies authorized by law to conduct a Procurement, except for the Judicial Department and the Legislative Department (Public Bodies for this Rule only). Public Bodies include state and local agencies with contracting authority in accordance with ORS 279A.140, 279A.050, and related rules.

(b) Department Evaluation. The Department, in consultation with other Public Bodies, must evaluate the extent to which HB 2867(2-4) aided the Public Body in making a determination as to whether to procure Services or to perform Services with the Public Body's own personnel and resources. At any time prior to the report described in Section (2)(c), the State Procurement Office may require information from the Public Bodies in accordance with this Section. In determining whether HB 2867(2-4) aided the Public Bodies in making their procurement determinations, the Department may analyze factors that helped or did not help the Public Bodies, including but not limited to: cost, expertise, availability, administrative time, clarity, and ambiguity.

(c) Department Report. The Department must report the results of the consultation and evaluation to the Legislative Assembly on January 10, 2011.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: HB 2867

COMMENTARY ON OAR 125-247-0110: New January 1, 2010

Section (1)(f)(B)(ii). Special Circumstances. Special circumstances are not limited to the seven (7) examples provided in the Statute and this Rule. The DPO should approve all special circumstances.

Section (2). Evaluation. The State Procurement Office, in its discretion, may require Public Bodies to report the results of their cost analyses and exceptions in 2010. If the State Procurement Office requires any information, then the information must be submitted in substantial conformity with a form approved by the State Procurement Office. Examples of information may include: the actual cost of performing the Services with Public Body's resources, the actual cost of the resulting contract, and an explanation of what the Contractor uniquely provides, unlike the Public Body, such as capabilities, experience, technical or other expertise necessary to perform the Services.

125-247-0255

Competitive Sealed Bidding; One Step Solicitations

(1) **Generally.** An Authorized Agency may procure Supplies and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a Competitive Sealed Bidding Solicitation and must contain the information required by ORS 279B.055(2) and by Section (2) of this Rule. The Authorized Agency

must provide public notice of the Competitive Sealed Bidding Solicitation as set forth in OAR 125-247-0305.

(2) **Invitation to Bid.** In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid must include the following:

(a) **General Information.**

(A) Notice of any pre-Offer conference as follows:

- (i) The time, date and location of any pre-Offer conference;
- (ii) Whether attendance at the conference will be mandatory or voluntary; and
- (iii) A provision that provides that statements made by the Authorized Agency's representatives at the conference are not binding upon the Authorized Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See OAR 125-247-0330 for required provisions of electronic Bids);

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

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

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 125-246-0210(3));

(G) How the Authorized Agency will notify Bidders of Addenda and how the Authorized Agency will make Addenda available (See OAR 125-247-0430); and

(H) The requirement, if applicable, for the awarded Bidder to obtain or subcontract labor, materials, or labor and materials from a supplier registered as an Emerging Small Business.

(b) **Authorized Agency Need.** The character of the Supplies and Services the Authorized Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements.

(c) **Bidding and Evaluation Process.**

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

(B) The Authorized Agency must set forth objective evaluation criteria in the Solicitation Document; and

(C) If the Authorized Agency intends to award Contracts to more than one Bidder according to OAR 125-247-0600(4)(d), the Authorized Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. This may be left to the Authorized Agency's discretion at the time of the Award, provided it is so described in the Solicitation.

(d) **Applicable Preferences according to ORS 279B.055(6)(b):**

(A) Preference for Oregon Supplies and Services, according to ORS 279A.120 and OAR 125-246-0300 and 125-246-0310;

(B) Preference for recycled materials, according to ORS 279A.125 and OAR 125-246-0320 through 125-246-0324; and

(C) Performance with the State of public printing, binding and stationery Work, according to ORS 282.210.

(e) **Certification if Required.** For Authorized Agencies subject to ORS 305.385, Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) **Terms and Conditions.** All *[Contract]* **contractual** terms and conditions **applicable to the Procurement**, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Supplies and Services without prior Written approval from the Authorized Agency.

(g) **Expectations and Standards. Authorized Agencies must comply with ORS 279B.055, as revised by HB 2867(5).**

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279B.055 **and HB 2867**

COMMENTARY ON OAR 125-247-0255: Revised *[July 1, 2008]* January 1, 2010

Added to Competitive Sealed Proposals Rule:

(f) Expectations and Standards. Authorized Agencies must comply with ORS 279B.060, as revised by HB 2867(6).

125-247-0500

Responsibility of Offerors

(1) **Determination.** Before awarding a Contract, the Authorized Agency must determine that the Offeror submitting the lowest Bid or Proposal or most Advantageous Offer is Responsible. The Authorized Agency must use the standards set forth in ORS 279B.110 and OAR 125-247-0640(1)(c)(F) to determine if an Offeror is Responsible. In the event an Authorized Agency determines an Offeror is not Responsible, it must prepare a Written determination of non-Responsibility as required by ORS 279B.110 and must reject the Offer.

(2) **Independent Contractor Status, Tax Compliance, and Requirements to Transact Business in Oregon.** For these responsibilities of Offerors, *see* OAR 125-246-0330.

(3) **Life Cycle Costing.** *See* OAR 125-247-0170.

(4) Record of Performance and Integrity. Authorized Agencies must comply with ORS 279B.110, as revised by HB 2867(7).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.050-279B.090 **and HB 2867**

COMMENTARY ON OAR 125-247-0500(1):
Adapted OAR 137-047-0500, except Sections (2) and (3)

125-247-0750
Judicial Review of Other Violations

(1) Any violation of ORS Chapter 279A or 279B by an Authorized Agency, for which no judicial remedy is otherwise provided in the Public Contracting Code, is subject to judicial review as set forth in ORS 279B.420.

(2) Alleged Violation of HB 2867. HB 2867 provides that an alleged violation of an Authorized Agency is subject to judicial review under this Rule, and Authorized Agencies must comply with ORS 279B.145, as revised by HB 2867(8).

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279B.420 **and HB 2867**

COMMENTARY ON OAR 125-247-0750:
Adapted OAR 137-047-0750

125-249-0145
Contracts for Oversight of Public Contracts

(1) Application.

(a) This Rule does not apply to a Procurement that qualifies as a construction manager/general contractor procurement or a design-build procurement, both as defined on August 4, 2009, in OAR 125-249-0610, as follows:

(A) "Construction Manager/General Contractor" (CM/GC) means a form of Procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a Guaranteed Maximum Price to complete the Contract Work; act as General Contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by the Authorized Agency under the CM/GC Contract; coordinate and manage the building process; provide general Contractor expertise; and act as a member of the project team along with the Authorized Agency, architect/engineers and other Consultants. CM/GC also refers to a Contractor under this form of Contract, sometimes known as the "Construction Manager at Risk."

(B) "Design-Build" means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design Services, participates on the project team with the Authorized Agency, and manages both design and construction. In this form of Contract, a single Person provides the Authorized Agency with all of the Personal Services and Work necessary to both design and construct the project.

(b) This Rule applies to:

(A) Procurements first advertised or otherwise solicited on or after January 1, 2010; or

(B) Contracts entered into on or after January 1, 2010.

(2) Definitions. For the purposes of this Rule only,

(a) "Personal Services" means Personal Services as defined in OAR 125-246-0110.

(b) "Affiliate" means a Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Contractor who is a party to a Public Contract that is subject to oversight by means of a Public Contract for Personal Services.

(3) Requirements.

(a) If an Authorized Agency has contracted with a firm to provide construction services or Architectural, Engineering and Land Surveying Services or Related Services, the Authorized Agency may not contract with that same firm or an affiliate of that firm to provide Personal Services for administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise providing oversight of the construction services or Architectural, Engineering and Land Surveying Services or Related Services.

(b) An Authorized Agency may not contract with a firm to perform construction services or Architectural, Engineering and Land Surveying Services or Related Services and then use the contract with that firm, through a subcontract, to contract with a Person to provide Personal Services for administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise providing oversight of that firm.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: HB 2867

125-249-0440

Rejection of Offers

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

(a) An Authorized Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement Process or that rejecting the Offer is in the public interest.

(b) The Authorized Agency must reject an Offer upon the Authorized Agency's finding that the Offer:

- (A) Is contingent upon the Authorized Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document, or
- (B) Takes exception to terms and conditions (including Specifications), or
- (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law; or
- (D) Offers Work that fails to meet the Specifications of the Solicitation Document; or
- (E) Is late; or
- (F) Is not in substantial compliance with the Solicitation Documents; or
- (G) Is not in substantial compliance with all prescribed public Solicitation procedures.

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

- (A) Has not been prequalified under ORS 279C.430 and the Authorized Agency required mandatory prequalification; or
- (B) Has been Disqualified; or
- (C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work; or
- (D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; or
- (E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document; or
- (F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document; or
- (G) Has failed to provide the certification required under Section 3 of this Rule; or
- (H) Is not Responsible. See [OAR 125-249-0390(2)] ORS 279C.375(3)(b) regarding Authorized Agency determination that the Offeror has met statutory standards of responsibility. **Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Authorized Agency must use a prequalification process described in OAR 125-249-0220 to determine if a Contractor is responsible. Before awarding a Contract, Authorized Agency must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, Authorized Agency must determine that the Offeror:**
 - (i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the Offeror to meet all contractual responsibilities;**
 - (ii) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the Contract.**
 - (iii) Is covered by liability insurance and other insurance in amounts the Authorized Agency requires in the Solicitation Documents.**
 - (iv) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.**
 - (v) Has made the disclosure required under ORS 279C.370.**
 - (vi) Completed previous Contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of**

performance means that to the extent that the costs associated with and time available to perform a previous Contract remained within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the Contract in a satisfactory manner. Authorized Agency should carefully scrutinize an Offeror's record of Contract performance if the Offeror is or recently has been materially deficient in Contract performance. In reviewing the Offeror's performance, Authorized Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of Contract, or whether the Offeror took appropriate corrective action. Authorized Agency may review the Offeror's performance on both private and public Contracts in determining the Offeror's record of Contract performance. Authorized Agency shall make its basis for determining an Offeror nonresponsible under this paragraph part of the Procurement File;

(vii) Has a satisfactory record of integrity. Authorized Agency in evaluating the Offeror's record of integrity may consider, among other things, whether the Offeror has previous criminal convictions for offenses related to obtaining or attempting to obtain a Contract or subcontract or in connection with the bidder's performance of a Contract or subcontract. An Offeror may lack integrity if Authorized Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to Authorized Agency. Authorized Agency may find an Offeror nonresponsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 125-249-0370 may be used to determine an Offeror's integrity. Authorized Agency shall make its basis for determining that an Offeror is nonresponsible under this paragraph part of the Procurement File;

(viii) Is legally qualified to Contract with Authorized Agency; and

(ix) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information concerning responsibility that Authorized Agency requests, Authorized Agency shall determine the Offeror's responsibility based on available information, or may find that the Offeror is not responsible.

(2) **Form of Business.** For purposes of this Rule, the Authorized Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 125-249-0370.

(3) **Certification of Non-Discrimination.** The Offeror must certify and deliver to the Authorized Agency Written certification, as part of the Offer that the Offeror has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so must be grounds for disqualification.

(4) Documenting Determinations. Authorized Agency must document its compliance with ORS 279C.375(3) on a Responsibility Determination Form substantially as set forth in ORS 279C.375(3)(c).

(5) Rejection of all Offers. An Authorized Agency may reject all Offers for good cause upon the Authorized Agency's Written finding it is in the public interest to do so. The Authorized Agency must notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

[(5)] (6) Criteria for Rejection of All Offers. The Authorized Agency may reject all Offers upon a Written finding that:

- (a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
- (b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement Process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
- (e) The Authorized Agency cancels the Solicitation in accordance with OAR 125-249-0270; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.105, 279A.110, 279C.375, 279C.380, 279C.395, **HB 2867**

COMMENTARY ON OAR 125-249-0440: Revised [May 31, 2006] January 1, 2010
Adapted OAR 137-049-0440