

## DIVISION 2

### POWERS OF THE BOARD

111-002-0005

#### Powers and Duties of the Board

(1) Pursuant to ORS 243.864, it will be within the powers and duties of the Board ~~The board will~~ to study all matters connected with providing adequate benefit plan coverage for Eligible Employees, **Early Retirees and their Dependents**, with concern for the welfare of the Employees, **Early Retirees and their Dependents** and affordability for the districts Educational Entities.

~~(2) The board will retain consultants, brokers, or other advisory personnel as it deems necessary and will employ such personnel as are required to perform the functions of the board.~~

~~(3) The board will design benefit plans, devise specifications, invite bids~~ **proposals**, analyze carrier responses to advertisements for bids **requests for proposals, and** decide on the award of contracts and do acts necessary to award contracts for benefit plan coverage of Eligible Employees, **Early Retirees and their Dependents** .

(3) The Board will work collaboratively with Educational Entities, members, carriers and providers to offer value-added benefit plans that support improvement in members' health status, hold carriers and providers accountable for outcomes, and provide affordable benefits and services. The board will place emphasis on:

- (a) Employee choice among high-quality **benefit** plans;
- (b) A competitive marketplace;
- (c) **Benefit** plan performance and information;
- (d) ~~District~~ **Educational Entity** flexibility in **benefit** plan design and contracting;
- (e) Quality customer services;
- (f) Creativity and innovation;
- (g) Benefit plans as part of total employee compensation;
- (h) Improvement of employee health;
- (i) An innovative delivery system;
- (j) A focus on improving quality and outcomes;

**(k) Promotion of health and wellness;**

**(l) Appropriate provider, health plan, and consumer incentives;**

**(m) Accessible and understandable information about costs, outcomes, and other health data; and**

**(n) Benefits that are affordable to the Educational Entities and Employees, Early Retirees and their Dependents .**

**(4) The Board may retain consultants, brokers, or other advisory personnel as it determines necessary and will employ such personnel as are required to perform the functions of the Board.**

**(5) The Board may delegate authority to the Administrator and Staff to complete duties described in (2)-(4) above.**

## DIVISION 5

### PROCUREMENT AND CONTRACTING FOR BENEFIT PLANS AND SERVICES

111-005-0010

#### Policy

The policy of the Oregon Educators Benefit Board (OEBB) is to select contractors and consultants in an expeditious, fair, and efficient manner that is consistent with the goal of delivering high-quality benefits and other services at a cost that is affordable to both the Employees, **Early Retirees and their Dependents** and the school districts, education service districts, and community college districts **Educational Entities**, and meets the requirements of section 4, chapter 00007, Oregon Laws 2007 **ORS 243.866**. The Board may enter into more than one contract for each type of benefit plan or other service sought.

111-005-0015

#### ~~Applicable Personal Service Contract Rules~~

~~For the procurement of personal service contracts, including but not limited to consultants, OEBB adopts the Department of Justice Model Rules OAR 137-046 through 137-048 (effective January 1, 2006).~~

#### Renewal, Screening and Selection for Benefits, Vendor and Personal Services Contracts

(1) The Board is charged with the obligation of obtaining Benefit Plans to provide Benefits to Eligible Employees, Early Retirees and their Dependents . OARs 111-005-0040 through 111-005-0080 set forth the screening, selection and renewal process to be used for all such Benefit Plan contracts.-The Board has sole authority for procuring all benefits and services contemplated by ORS 243.860 through ORS 243.886.

(2) Except as provided in OARs 111-005-0040 through 111-005-0080, the Board adopts the DOJ model public contract rules in OAR 137, division 46 (General Provisions Related to Public Contracting) and division 47 (Public Procurements for Goods or Services), effective June 15, 2010, as the contracting rules that shall apply to its procurements for Benefit Plan contracts.

(3) The Board adopts the DOJ model public contract rules in OAR 137, division 46 (General Provisions Related to Public Contracting) and division 47 (Public Procurements for Goods or Services), effective June 15, 2010, as the contracting rules that shall apply to its procurements for vendor and personal service contracts within the Board's contracting authority.

## 111-005-0020

### Definitions

For the purposes of OARs 111-005-0010, 111-005-0015 and 111-005-0040 through 111-005-~~0080~~ 0160 the following definitions will apply:

(1) "Apparent successful proposer" or "ASP" means the organization selected as a result of a competitive and completed procurement process.

(2) ~~"Benefit plan" includes, but is not limited to:~~

~~(a) Insurance or other benefits including medical, dental, vision, life, disability, accidental death, long term care, flexible spending accounts, supplemental medical, supplemental dental, supplemental vision, or any other remedial care recognized by state law, and related services and supplies;~~

~~(b) Comparable benefits for employees who rely on spiritual means of healing; and~~

~~(c) Self insurance programs managed by the Board.~~

~~(3) "Benefits" means goods and services provided under benefit plans.~~

~~(4) "Board" means the ten member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007~~

~~(2.5) "Consultant" means brokers or other advisory personnel hired by the Board to:~~

~~(a) Assist in acquiring adequate benefit plan coverage for eligible district **Educational Entity Employees, Early Retirees and their Dependents**;~~

~~(b) Assist in the study of all matters connected with the provision of adequate benefit plan coverage for eligible district **Educational Entity Employees, Early Retirees and their Dependents**;~~

~~(c) Assist in the development and implementation of decision-making processes;~~

~~(d) Design and implement additional programs to review, monitor and assist in the improvement of eligible district **Educational Entity Employees, Early Retirees and their Dependents** health; and~~

~~(e) Provide other services as required by the Board.~~

~~(36) "Contractor" means an individual or firm who provides services to the Board under a public contract.~~

~~(7) "District" means a common school district, a union high school district, an education service district, or a community college district.~~

~~(48) "Emergency" means a situation characterized by a substantial risk of interruption of benefit services that requires circumstances that:~~

~~**(A) Could not have been reasonably foreseen;**~~

~~**(B) Create a substantial risk of loss, damage or interruption of Benefits or other services or a substantial threat to property, public health, welfare or safety; and**~~

~~**(C) Require** prompt execution of a contract to remedy the condition.~~

~~(59) "Extensive procurement" means the process of soliciting proposals and bids and selecting a contractor for services amounting to \$150,000 and over.~~

~~(610) "Intermediate procurement" means the process of soliciting proposals and bids and selecting a contractor for services amounting to under \$150,000 but over \$5,000.~~

~~(11) "Non-responsive proposal" means the Proposer:~~

~~(a) Fails to provide information as required in the specification of the RFP;~~

~~(b) Takes exception to the terms and conditions in the proposed contract;~~

~~(c) Misses the RFP submission deadline;~~

~~(d) Has been debarred as set forth in ORS 279 B.130;~~

~~(e) Is not licensed to do business in Oregon or fails to meet other licensure and certification requirements included in the RFP;~~

~~(f) Will not provide or adhere to the certification of non-discrimination required under ORS 279A.110(4);~~

~~(g) Is found non-responsive as described under ORS 279B.110; or~~

~~(h) Fails to meet any other requirement set forth in the RFP.~~

~~(13) "Oregon Educators Benefit Board" or "OEBB" means the program created under chapter 00007, Oregon Laws 2007.~~

~~(7 14) "ORPIN" means the Oregon Procurement Information Network, an online service operated by the Department of Administrative Services that displays procurements and contracts issued by the state of Oregon's agencies.~~

**(8) "Person" means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.**

**(912) "Proposal" means a competitive document, binding on the proposer and** submitted in response to a Request for Proposal.

**(1015) "Proposer" means a Person or entity** submitting a proposal in response to a Request for Proposal.

**(1116) "Renewal contractor" means a contractor or consultant who provided the same or similar employee benefit plan or other services under a contract with the Board in the plan year immediately prior.**

**(12 17) "Request for Proposal" or "RFP" means the written document all documents, whether attached or incorporated by reference, used for** soliciting competitive written proposals, and setting forth the criteria and method to be used by the Board to the best responsive proposals, apparent successful proposer, and the eventual contractor.

**(1318) "Responsible proposer" means a person who meets the standards of responsibility described in OAR 111-005-0055.** the proposer:

(a) Is qualified legally to contract with the Board;

(b) Has supplied all necessary information in connection with the inquiry concerning responsibility;

(c) Is authorized to do business in Oregon;

(d) Has the appropriate financial, material, equipment, facility, and personnel resources and expertise necessary to indicate the proposer can meet all contractual responsibilities;

(e) Has a satisfactory record of contract performance; and

(f) Has a satisfactory record of business integrity. This includes no convictions for violations of confidentiality, monetary fraud, or collusion.

**(14 19) "Responsive proposal" means that the a proposal that substantially complies with the request for proposals and all prescribed procurement procedures and requirements.** meets the minimum requirements of the RFP and has not been deemed "non-responsive" as described in section (11).

(1520) "Selection committee" means the group of individuals appointed and approved by the Board to review, evaluate and score proposals received as part of an intermediate or extensive procurement.

(1621) "Small procurement" means the process of securing contractors or consultants for services amounting to \$5,000 or less.

(1722) "Sole source" means the only contractor or consultant of a particular product or service reasonably available.

## **111-005-0040**

### **Extensive Procurement Process**

The Board will use the following procedure except as provided for under OAR 111-005-0046 or 111-005-0048.

(1) Announcement. The Board will post solicitation notices for benefits via the Oregon Procurement and Information Network (ORPIN). The Board may also post solicitation notices for benefits in trade periodicals or newspapers of general or specialized circulation. The solicitation notice will include a description of the benefits or services sought, the scope of the services required, evaluation and selection criteria, and a description of any special requirements. The notice will invite qualified prospective proposers to submit proposals. The notice will specify when and where to obtain the RFP, where to return the proposal, the method of submission, and the closing date.

(2) No remuneration will be offered to prospective proposers for attendance, travel, document preparation, etc. Unless otherwise specified in the RFP, the pre-proposal conference will:

(a) Be voluntary; and

(b) Be held in Salem, Oregon.

(3) RFP protest; request for change or request for clarification.

(a) Protest.

(A) A proposer may deliver a protest to the Board not less than ten calendar days prior to closing, unless otherwise specified in the RFP.

(B) Proposer protests must be in writing and must include:

(i) A detailed statement of the legal and factual grounds for the protest;

(ii) A description of the resulting prejudice to the proposer; and

(iii) A statement of the desired changes to the RFP.

(C) The Board will not consider a proposer's protest after the submission deadline.

(i) The Board will provide notice to the applicable entity if it entirely rejects a protest. If the Board agrees with the entity's protest, in whole or in part, the Board will issue an addendum reflecting its determination under OAR 137-030-0055 and 137-047-0430 or cancel the solicitation under OAR 137-030-0115.

(ii) If the Board receives a written protest from a proposer according to this rule, the closing may be extended if the Board determines an extension is necessary to consider the protest and to issue any addendum to the RFP.

(b) Request for change.

(A) A proposer may request in writing a change to the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a proposer to make a request for changes and does not specify otherwise, proposer must deliver the written request for change to the Board not less than ten calendar days prior to closing.

(B) A proposer's written request for change must include a statement of the requested changes to the RFP specifications, including the reason for the requested change.

(C) The Board will not consider a proposer's request for change after the submission deadline.

(i) The Board will provide notice to the applicable entity if it entirely rejects a change. If the Board agrees with the entity's request for change, in whole or in part, the Board will issue an addendum reflecting its determination under OAR 137-030-0055 and 137-047-0430 or cancel the solicitation under OAR 137-030-0115.

(ii) If the Board receives a written request for a change from a proposer according to this rule, closing may be extended if the Board determines an extension is necessary to consider the request and to issue any addendum to the RFP.

(c) Request for clarification.

(A) A proposer may request in writing clarification of the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a proposer to make a request for clarification and does not specify otherwise, a proposer must deliver the written request for clarification to the Board not less than ten calendar days prior to closing.

(B) A proposer may request that the Board clarify any provision of the RFP.

(C) The Board will not consider a proposer's request for clarification after the submission deadline. The Board's clarification to a proposer, whether orally or in writing, does not change the RFP and is not binding on the Board unless the Board amends the RFP by addendum.

(4) Addenda to an RFP following an appeal or request for change or clarification.

(a) Issuance; receipt. The Board may change an RFP only by written addenda. A proposer must provide written acknowledgement of receipt of all issued addenda with its proposal, unless the Board otherwise specifies in the addenda.

(b) Notice and distribution. The RFP must specify how the Board will provide notice of addenda and how the Board will make the addenda available.

(c) Timelines; extensions. The Board will issue addenda within a reasonable time to allow prospective proposers to consider the addenda in preparing their proposals. The Board may extend the closing if the Board determines prospective proposers need additional time to review and respond to addenda. The Board will not issue addenda less than 72 hours before the closing unless an addendum also extends the closing, except to the extent required by public interest.

(d) Request for change or protest. A proposer may submit a written request for change or protest to the addendum by the close of the Board's next business day after issuance of the addendum, unless a different deadline is set forth in an addendum.

(5) Submission. All proposals submitted must comply with the procurement's specifications.

(a) If portions of the proposal to any solicitation are deemed unacceptable or non-responsive portions of the proposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the proposer unopened.

(b) Submission of proposals must be in written hard copy or electronic format and delivered, as required by the specifications of the solicitation. OEGB is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEGB recipient by the closing date and time stated in the RFP.

(6) Evaluation. The Selection Committee will evaluate proposals only in accordance with criteria set forth in the RFP and applicable law. ~~The Board will not divulge the names of the selection committee until completion of the cost negotiations or the apparent successful proposer has been announced.~~ The Board will evaluate proposals to determine the responsible proposer or proposers submitting the best responsive proposal or proposals.

(7) Rejection of proposal. The Board may reject any proposal for good cause and deem it as non-responsive upon written finding that it is in the states', District Educational Entities', or Employees, Early Retirees and their Dependents' interest to do so or acceptance of the proposal may impair the integrity of the procurement process. (a) The Board will notify the proposer of its rejection of the proposal in writing and provide the good cause justification and finding. OEGB is not liable to any Proposer for any loss or expense caused by or resulting

**from any rejection, cancellation, delay or suspension. Without limiting the generality of the foregoing, the Board may reject any Proposal upon OEBC's finding that the Proposal:**

- (a) **Is contingent upon OEBC's acceptance of terms and conditions (including Specifications) that differ from the RFP;**
- (b) **Takes exception to terms and conditions set forth in the RFP;**
- (c) **Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the RFP or in contravention of applicable law;**
- (d) **Offers services that fail to meet the specifications of the RFP;**
- (e) **Is late;**
- (f) **Is not in substantial compliance with the RFP;**
- (g) **Is not in substantial compliance with all prescribed procurement procedures;**
- (h) **Is from a Proposer that has been debarred as set forth in ORS 279B.130;**
- (i) **Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or**
- (j) **Is from a Proposer found non-responsible as described in OAR 111-005-0055.**

(8) Intent to award, discuss or negotiate. After the protest period provided in subsection (3)(a) expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may engage in discussions and negotiations with proposers in the competitive range.

(9) Discussions and negotiations. If the Board chooses to enter into discussions and negotiations with the Proposers in the competitive range, the Board will proceed as follows:

(a) Initiating discussions. The Board must initiate oral or written discussions and negotiations with all of the proposers in the competitive range regarding their proposals.

(b) Conducting discussions. The Board may conduct discussions and negotiations with each proposer in the competitive range as necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions or negotiations with each proposer. The Board may terminate discussions and negotiations with any proposer in the competitive range at any time. All proposers in the competitive range will be offered the opportunity to discuss their proposals with the Board before the Board notifies proposers of the award decisions. In conducting discussions, the Board and any designated representatives:

(A) Will treat all proposers fairly and will not favor any proposer over another.

(B) Will not discuss proposers' proposals with any other proposers and will maintain all proposals as confidential documents **to the extent permitted by the Public Records Law.**

(C) Will not divulge the name of the proposers or the content of the proposals until cost negotiations are complete or an apparent successful proposer has been announced.

(D) Will determine whether other factors, including but not limited to, Oregon residency of the primary business office and proposer demonstration of services and products, will be used to determine the apparent successful proposer, if a tie between proposers occurs.

(c) At any time during the period allowed for discussions and negotiations, the Board may:

(A) Continue discussions and negotiations with a particular proposer or proposers; or

(B) Terminate discussions with a particular proposer and continue discussions with other proposers in the competitive range.

(d) The Board may continue discussions and negotiations with proposers until determining who will be awarded contracts.

(10) Notice of intent to award. The Board will provide written notice to all proposers of intent to award the contract, unless otherwise provided in the RFP. The Board's award will not be final until the later of the following:

(a) Seven calendar days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board's written response to all timely filed protests that denies the protests and affirms the award.

(11) Right to protest award. An adversely affected or aggrieved proposer may submit to the Board a written protest of the Board's intent to award. The protest must be made within seven calendar days after issuance of the notice of intent to award the contract, unless otherwise specified in the RFP.

(a) The proposer's protest must be in writing and must specify the grounds upon which the protest is based.

(b) A proposer is adversely affected or aggrieved only if **the Proposer would be eligible to be awarded the contract in the event that the protest were successful, and the reason for the protest is that:**

**(A) All higher ranked Proposals are nonresponsive;**

**(B) OEGB has failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the RFP;**

**(C) OEGB has abused its discretion in rejecting the protestor's Proposal as nonresponsive;**  
**or**

**(D) OEGB's evaluation of Proposals or OEGB's subsequent determination of award is otherwise in violation of OEGB's rules or ORS 243.860 to 243.886.**

~~(A) the proposer is eligible for award of the contract as a responsible proposer; and~~

~~(B) the Board committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule.~~

(c) The Board will not consider a protest submitted after the time period specified in this section or a different period if provided in the RFP.

(d) The Board Chair, or designee, has the authority to settle or resolve a written protest meeting the submission requirements of this rule.

(e) If a protest is not settled, the Board Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(12) Award of contracts. The Board will make final selections based on the evaluation criteria **included in OAR 111-002-0005(3) and the RFP** including, but not limited to, contractor or consultant availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBC, members and clients; debarment status; and references. The Board will place emphasis on employee choice among high-quality plans, plan performance and information, a competitive marketplace, employer flexibility in plan design and contracting, quality customer service, creativity and innovation and the improvement of employee health.

**(13) Confidentiality: Until after the notice of intent to award a contract is issued, Proposals are not required to be open for public inspection, and OEBC shall in good faith seek to protect Proposals from disclosure under ORS 192.502(4) as a confidential submission or under other applicable exemptions from disclosure. After the notice of intent to award a contract is issued, OEBC may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.**

~~(14)~~ (13) Contract. The successful proposer must promptly execute the contract after the award is final **and all contractual terms and conditions have been negotiated and agreed upon.** The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

~~15) An amendment for additional services that are reasonably related to the scope of work under the original benefits plan or other services contract, including extra work or a change that increases the original contract price or length of time, may be made with the contractor or consultant without re-entering the formal procurement process provided that the cumulative amendment does not materially alter the contract.~~

111-005-0042

**Intermediate Procurement Process**

For an intermediate procurement, the Board will use the following procedure except as provided for under OAR 111-005-0046 or 111-005-0048.

(1) **Announcement.** The Board will post solicitation notices for benefits via the Oregon Procurement and Information Network (ORPIN). The Board may also post solicitation notices for benefits in trade periodicals or newspapers of general or specialized circulation. The notice will include a description of the benefits or services sought, the scope of the services required, and a description of any special requirements. The notice will invite qualified prospective proposers to submit proposals. The notice will specify when and where to obtain the RFP and return the proposal and the closing date.

(2) **Submission.** All submitted proposals must comply with the RFP's specifications. If portions of the proposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the proposal will be deemed non-responsive and will not be given further evaluation or consideration. If a proposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation and will be returned to the proposer unopened.

(a) Submission of proposals must be in written hard copy or electronic format and delivered as required by the specifications of the solicitation. OEGB is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEGB recipient by the closing date and time stated in the RFP.

(b) The proposal from the prospective proposer will describe the proposer's credentials, performance data and other information sufficient to establish proposer's qualifications for providing the benefits sought and all other information requested in the RFP.

(3) **Evaluation.** The Board may appoint a Selection Committee to evaluate proposals in accordance with criteria set forth in the RFP and applicable law. The Board will not divulge the names of the selection committee until completion of the cost negotiations or the apparent successful proposer has been announced. The Board will evaluate proposals to determine the responsible proposer or proposers submitting the best responsive proposal or proposals.

(4) **Discussions and negotiations.** If the Board chooses to enter into discussions and negotiations with the proposers, the Board:

(a) Will treat all proposers fairly and will not favor any proposer over another.

(b) Will not discuss proposers' proposals with any other proposers and will maintain all proposals as confidential documents.

(c) Will not divulge the name of the proposers or the content of the proposals until cost negotiations are complete.

(d) Will determine whether other factors, including but not limited to, Oregon residency of the primary business office and proposer demonstration of services and products, will be used to award the contract.

(5) Notice of intent to award. The Board will provide written notice to all proposers of intent to award the contract, unless otherwise provided in the RFP. The Board's award will not be final until the later of the following:

(a) Seven calendar days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board's written response to all timely filed protests that denies the protests and affirms the award.

(6) Right to protest award. An adversely affected or aggrieved proposer may submit to the Board a written protest of the Board's intent to award. The protest must be made within seven calendar days after issuance of the notice of intent to award the contract, unless otherwise specified in the RFP.

(a) The proposer's protest must be in writing and must specify the grounds upon which the protest is based.

(b) A proposer is adversely affected or aggrieved only if:

(A) the proposer is eligible for award of the contract as a responsible proposer; and

(B) the Board committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule.

(c) The Board will not consider a protest submitted after the time period specified in this section or a different period if provided in the RFP.

(d) The Board Chair, or designee, has the authority to settle or resolve a written protest meeting the submission requirements of this rule.

(e) If a protest is not settled, the Board Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(7) Award of contracts. The Board will make final selections based on the evaluation criteria **included in OAR 111-002-0005(3) and the RFP** ~~including, but not limited to, contractor availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBB, members and clients; debarment status; and references. The Board will place emphasis on employee choice among high quality plans, plan performance and information, a competitive marketplace, employer flexibility in plan design and contracting, quality customer service, creativity and innovation and the improvement of employee health.~~

**(8) Confidentiality: Until after the notice of intent to award a contract is issued, Proposals are not required to be open for public inspection, and OEBC shall in good faith seek to protect Proposals from disclosure under ORS 192.502(4) as a confidential submission or under other applicable exemptions from disclosure. After the notice of intent to award a contract is issued, OEBC may withhold from disclosure to the public materials included in a Proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.**

(98) Contract. The successful proposer must promptly execute the contract after the award is final. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.

~~(109) An amendment for additional services that are reasonably related to the scope of work under the original benefits plan or other services contract, including extra work or a change that increases the original contract price or length of time, may be made with the contractor without re-entering the formal procurement process provided that the cumulative amendment does not:~~

~~(a) Materially alter the contract; and~~

~~(b) **shall not** increase the total contract cost to a sum that is greater than twenty-five percent of the original contract cost.~~

111-005-0044

### **Small Procurement Process**

For a small procurement, OEBC may procure contractor services in any manner it deems practical, including by direct selection, negotiation and award.

(1) The Board Chair delegates authority to the Public Employees' Benefit Board Administrator and the OEBC Deputy Administrator to enter into contracts on behalf of the Board.

(2) Award of contracts. The OEBC Administrator or OEBC Deputy Administrator will base selections on evaluation criteria which may include, but is not limited to, contractor availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OEBC, members and clients; debarment status; and references. Emphasis will be placed on quality customer service, creativity and innovation and the improvement of employee health.

(3) Contract. The selected contractor must promptly execute the contract. The OEBC Administrator or OEBC Deputy Administrator will execute the contract only after obtaining all applicable required documents and contractor signatures.

(4) An amendment for additional services **shall not** ~~that are reasonably related to the scope of work under the original benefits plan or other services contract, including extra work or a change that increases the original contract price or length of time, may be made with the contractor~~

without re-entering the formal procurement process provided that the cumulative amendment does not:

(a) Materially alter the contract; and

(b) Increase the total contract cost to a sum that is greater than twenty-five percent of the original contract cost.

111-005-0046

### **Sole Source Procurement Process**

The Board may negotiate with a single source provider of benefits if award a contract for Benefits without competition when the Administrator of OEBC determines in writing that the services are available only from only one prospective proposer, or the prospective proposer has special skills uniquely required for the adequate performance of the services. source, or the contractor is defined as a Qualified Rehabilitation Facility as defined in Oregon's public contracting code.

**(1) The determination of a sole source must be based on written findings that may include:**

**(a) That the efficient utilization of existing services requires the acquisition of compatible services;**

**(b) That the services required for the exchange of software or data with other public or private agencies are available from only one source;**

**(c) That the services are for use in a pilot or an experimental project; or**

**(d) Other findings that support the conclusion that the goods or services are available from only one source.**

**(2) To the extent reasonably practical, OEBC shall negotiate with the sole source to obtain contract terms advantageous to OEBC.**

~~(3) Contract. The single source provider must promptly execute the contract after the award is final. The Board Chair, or designee, will execute the contract only after it has obtained all applicable required documents and contractor signatures.~~

~~(2) An amendment for additional services that are reasonably related to the scope of work under the original benefits plan or other services contract, including extra work or a change that increases the original contract price or length of time, may be made with the contractor without re-entering the formal procurement process provided that the cumulative amendment does not materially alter the contract.~~

**111-005-0047**

**Renewal Procedure**

**(1) If the Board does not issue an RFP or Single Source procurements to solicit formal proposals from qualified potential Contractors or Vendors, the Board may directly negotiate and enter into renewal contracts each plan year with renewal contractors to provide Benefits and other services without following the procedures set forth in sections 111-005-0040.**

**(2) The Board may renew contracts with renewal contractors for as many years as the Board determines is in the best interest of the state, Educational Entities and Employees, Early Retirees and their Dependents.**

**(3) The Board may invite renewal Proposals from those Contractors or Vendors who provided the same or similar employee Benefit Plan or other services in the year immediately prior. An employee Benefit Plan or other services contract is similar if it is reasonable related to the scope of work described in the procurement under which such a contract was awarded.**

**111-005-0050**

**Mistakes**

(1) Treatment of mistakes. If the OEBB discovers certain mistakes in a proposal ~~after opening,~~ but before award of the contract, and the mistakes are not identified as those qualifying as non-responsive to the specifications of the procurement, the OEBB may take the following action:

(a) Waive or permit a proposer to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the proposal, or an insignificant mistake that can be waived or corrected without prejudice to other proposers. Mistakes including, but not limited to, signatures not affixed to the proposal document, proposals sent to the incorrect address, insufficient number of proposals submitted, or incorrect format will not be considered minor.

(b) Correct a clerical error if the intended proposal and the error are evident on the face of the proposal, or other documents submitted with the proposal, and the proposer confirms the correction in writing. A clerical error includes, but is not limited to, a proposer's error in transcribing its proposal.

(2) Rejection for mistakes. OEBB may reject any proposal in which a mistake is evident on the face of the proposal and the intended correct proposal is not evident or cannot be substantiated from documents accompanying the proposal. In order to ensure integrity of the competitive procurement process and to assure fair treatment of proposers, mistakes discovered that are contrary to the specifications of the procurement will be carefully reviewed and will be determined, under sole authority of the OEBB, to be waived or not be waived.

(3) If the OEBB discovers mistakes in the proposal after award, and the mistakes are not considered minor, the Board reserves the right to determine if the award will be revoked. The Board will then re-evaluate proposals deemed to be in second, third, fourth, etc., in the standings.

111-005-0055

Responsible Proposer

(1) Before awarding a Contract, the Board must have information that indicates the Proposer meets the applicable standards of responsibility. OEBB shall prepare a written determination of non-responsibility for a Proposer if OEBB determines that the Proposer does not meet the standards of responsibility.

(2) In determining whether a Proposer has met the standards of responsibility, OEBB shall consider whether a Proposer:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

(b) Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this paragraph, 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 Proposer's control, the Proposer stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. OEBB shall document the Proposer's record of performance if OEBB finds under this paragraph that the Proposer is not responsible.

(c) Has a satisfactory record of integrity. OEBB in evaluating the Proposer's record of integrity may consider, among other things, whether the Proposer has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Proposer's performance of a contract or subcontract. OEBB shall document the Proposer's record of integrity if OEBB finds under this paragraph that the Proposer is not responsible.

(d) Is legally qualified to contract with OEBB.

(e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a Proposer fails to promptly supply information concerning responsibility that OEBB requests, OEBB shall determine the Proposer's responsibility based on available information or may find that the Proposer is not responsible.

(f) Was not debarred by OEBB in accordance with ORS 279B.130.

(3) OEBB may refuse to disclose outside of OEBB confidential information furnished by a Proposer under this section when the Proposer has clearly identified in writing the

**information the Proposer seeks to have treated as confidential and OEBC has authority under ORS 192.410 to 192.505 to withhold the identified information from disclosure.**

**111-005-0060**

#### **Records Maintenance**

OEBC will maintain all files pertaining to the selection process for all benefits and other service contracts entered on behalf of the state for six years. Files include, but are not limited to:

- (1) ~~The method and copy of announcement.~~
- (2) ~~The names of firms or individuals and cost estimates considered.~~
- (3) ~~The basis for selection.~~
- (4) ~~A copy of the resulting contract and any subsequent amendments.~~

**111-005-0070**

#### **Renewal process for Contractor Contracts**

(1) Renewal procedure. If the Board does not issue a procurement to solicit formal proposals for benefit plans and other services, the Board may invite renewal proposals, directly negotiate and enter into renewal contracts with renewal contractors to provide benefit plans without following the procedures set forth in OAR 111-005-0040.

(2) The Board may renew contracts with renewal contractors for as many years as the Board determines is in the best interest of the state, District Educational Entities, and Employees, Early Retirees and their Dependents.

(3) The Board will negotiate with renewal contractors and enter into contracts with them after giving full consideration to factors which include, but are not limited to, contractor capability, experience, approach, compensation requirements and references.

**111-005-0080**

#### **Contract Amendments**

**OEBC may amend a contract without additional competition in any of the following circumstances:**

**(a) The amendment is within the scope of the procurement as described in RFP, the sole source determination, or special procurement (the "Procurement Document"). An amendment is not within the scope of the procurement if the Agency determines that if it**

**had described the changes to be made by the amendment in the Procurement Document, it would likely have increased competition or affected award of the contract.**

**(b) These rules otherwise permit OEGB to award a contract without competition for the goods or services to be procured under the amendment.**

**(c) The amendment is necessary to comply with a change in law that affects performance of the contract.**

**(d) The amendment results from renegotiation of the terms and conditions, including the contract price, of a contract and the amendment is advantageous to OEGB, subject to all of the following conditions:**

**(A) The Services to be provided under the amended contract are the same as the Services to be provided under the unamended contract.**

**(B) OEGB determines that, with all things considered, the amended contract is at least as favorable to OEGB as the unamended contract.**

**(C) The amended contract does not have a total term greater than allowed in the Procurement Document after combining the initial and extended terms.**

Stat. Auth.: ORS 243.860 – 243.886

Stats. Implemented: ORS 243.864