

## 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 eContractors and eConsultants 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 the Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees and their ~~Dependents and Educational Entities~~, and meets the requirements of ORS 243.866. The Board may enter into more than one eContract for each type of bBenefit pPlan or other service sought.

111-005-0015

#### 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~~ for Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees and their Dependents. Oregon Administrative Rules (OARs) 111-005-0040 through 111-005-0080 set forth the screening, selection and renewal ~~process~~ processes to be used for all such Benefit Plans ~~contracts~~. The Board has sole authority ~~for procuring~~ to procure all bBenefits Plans 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~~ eContracts.

(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 April 15, 2011, 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 the following definitions will apply:

(1) "Apparent sSuccessful pProposer" or "ASP" means an the organization selected as a result of a competitive and completed pProcurement process.

**(2) "Benefit Plan Contractor" means a Contractor that administers one or more Benefit plans for OEBB.**

**(3) "Bid" means a competitive document, binding on the Proposer and submitted in response to an Invitation to Bid.**

**(4) "Bidder" means a Person submitting a proposal in response to an ITB.**

**(5) "Competitive Range" means the group of Proposers or Bidders responding to a Procurement that has Proposals or Bids that score higher based on the Procurement's evaluation criteria than the remaining Proposers or Bidders in some meaningful way. Proposers or Bidders who are determined to be in a Competitive Range may also be referred to as finalists.**

~~(62)~~ "Consultant" means brokers or other advisory personnel hired by the Board to:

(a) Assist in acquiring adequate ~~bBenefit pPlan~~ coverage for ~~eEligible~~ **Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees.** ~~Educational Entity Employees, Early Retirees and their Dependents;~~

(b) Assist in the study of all matters connected with the provision of adequate ~~bBenefit pPlan~~ coverage for **Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees;** ~~eligible 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 ~~health~~ the improvement **for Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees;** ~~of eligible Educational Entity Employees, Early Retirees and their Dependents health;~~ and

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

~~(73)~~ "Contractor" means an individual or firm who provides services to the Board under a public contract.

~~(84)~~ "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of Benefits **Plans** 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.

~~(95)~~ "Extensive ~~pProcurement~~" means the process of soliciting ~~pProposals~~ and ~~bBids~~ and selecting a ~~eContractor~~ for services amounting to \$150,000 and over.

~~(106)~~ "Intermediate ~~pProcurement~~" means the process of soliciting ~~pProposals~~ and ~~bBids~~ and selecting a ~~eContractor~~ for services amounting to under \$150,000 but over ~~\$105,000~~.

**(11) "Invitation to Bid" or "ITB" means all documents, whether attached or incorporated by reference, used for soliciting bids.**

**(12) "OEBB" or "the Board" refers to the Board or other Persons or groups the Board delegates authority to for all or part of the Solicitation process.**

~~(137)~~ "ORPIN" means the Oregon Procurement Information Network, an online service operated by the Department of Administrative Services that displays ~~pProcurements~~ and contracts issued by the state of Oregon's agencies.

~~(148)~~ "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.

**(15) "Procurement" means the action of obtaining goods or services under a public contract.**

~~(169)~~ "Proposal" means a competitive document, binding on the ~~pProposer~~ and submitted in response to a ~~Request for Proposal~~ **RFP.**

~~(1740)~~ "Proposer" means a Person submitting a proposal in response to a ~~Request for Proposal~~ **RFP.**

~~(1814)~~ "Renewal eCContractor" 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.

~~(1912)~~ "Request for Proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

~~(2013)~~ "Responsible pProposer" means a pPerson who meets the standards of responsibility described in OAR 111-005-0055.

~~(2114)~~ "Responsive pProposal" means a pProposal that substantially complies with the ~~request for proposals~~ RFP and all prescribed pProcurement procedures and requirements.

~~(2215)~~ "Selection eCCommittee" means the group of individuals appointed ~~by the Board Chair~~ or approved by the Board to review, evaluate and score pProposals received as part of an ~~i~~Intermediate or ~~e~~Extensive pProcurement.

**(23) "Single Point of Contact" or "SPC" means the designated OEGB staff or designee that serves as the official point of contact between OEGB and interested Proposers, ASPs, or Contractors.**

~~(2416)~~ "Small pProcurement" means the process of securing cContractors or eConsultants for services amounting to \$5,000 or less.

~~(2517)~~ "Sole sSource" means the only eContractor or eConsultant of a particular product or service reasonably available.

**(26) "Solicitation" generally refers to the methods used to request goods or services through a competitive process, including Requests for Proposals, Invitations to Bid, and other methods used under Intermediate or Extensive Procurements.**

111-005-0040

### Extensive Procurement Process

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

(1) Announcement. The Board will post sSolicitation notices for bBenefits Plans or services on ~~via the Oregon Procurement and Information Network (ORPIN)~~. The Board may also post sSolicitation notices for bBenefits Plans or services in trade periodicals or newspapers of general or specialized circulation. The sSolicitation notice will include a description of the bBenefits Plans 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 pProposers to submit pProposals. The notice will specify when and where to obtain the RFP, where to return the pProposal, the method of submission, and the closing date.

(2) No remuneration will be offered to prospective pProposers for attendance, travel, document preparation, etc. Unless otherwise specified in the RFP.

**(3) Pre-proposal conference. Unless otherwise specified in the RFP, the pre-proposal conference will:**

(a) Be voluntary; and

(b) Be held in Salem, Oregon.

~~(4)~~ RFP-p Protest of RFP specifications; request for change; ~~or~~ request for clarification.

(a) Protest of RFP specifications.

(A) A ~~p~~**P**roposer may deliver a protest to ~~the Board~~ **the SPC** not less than ten calendar days prior to closing, unless otherwise specified in the RFP.

(B) ~~Proposer p~~ **P**rotests 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 ~~p~~**P**roposer; and

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

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

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

(E) If ~~OEBB~~ **the Board** receives a written protest from a proposer according to **that meets** this rule **rule's requirements**, the closing may be extended if ~~the Board~~ **OEBB** determines an extension is necessary to consider the protest and to issue any addendum to the RFP.

(b) Request for change.

(A) A ~~p~~**P**roposer may **submit a written** request ~~in writing a~~ **to** change to the RFP specifications, unless otherwise specified in the RFP. If the RFP allows a ~~proposer to make a request~~s for changes and does not specify otherwise, ~~p~~**P**roposer must deliver the written request for change to the **SPC 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 **as well as**, ~~including~~ the reason for the requested change.

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

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

(E) If ~~the Board~~ **OEBB** receives a written request for a change from a proposer according to **that meets** this rule **rule's requirements**, closing may be extended if ~~the Board~~ **OEBB** determines an extension is necessary to consider the request and to issue any addendum to the RFP.

(c) Request for clarification.

(A) A ~~p~~**P**roposer may **submit a written** request ~~in writing~~ **for** 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 ~~p~~**P**roposer must deliver the written request for clarification to the **SPC Board** not less than ten calendar days prior to closing.

(B) A ~~p~~**P**roposer may request that ~~the Board~~ **OEBB** clarify any provision of the RFP.

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

(54) Addenda to an RFP following a **protest of RFP specifications**, ~~an appeal or~~ request for change, or **request for** clarification.

(a) Issuance; receipt. ~~The Board~~ **OEBB** may change an RFP only by written addenda. A ~~p~~**P**roposer must provide written acknowledgement of receipt of all issued addenda with its ~~p~~**P**roposal, unless ~~the Board otherwise specifies in the addenda~~ **specified in the RFP.**

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

(c) Timelines; extensions. ~~The Board~~ **OEBB** will issue addenda within a reasonable time to allow ~~prospective~~**potential** ~~p~~**P**roposers to consider the addenda in preparing their ~~p~~**P**roposals. ~~The Board~~ **OEBB** may extend the closing if ~~the Board~~ it determines ~~prospective~~**potential** ~~p~~**P**roposers need additional time to review and respond to addenda. ~~The Board~~ **OEBB** 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 **potential** ~~p~~**P**roposer may submit a written request for change or protest to the addendum by the close of ~~the Board's~~ **OEBB's** next business day after issuance of the addendum, unless ~~a different deadline is set forth in~~ **otherwise specified in the** an addendum.

~~(65)~~ Submission. All ~~p~~**P**roposals ~~submitted~~ must comply with the procurement's **RFP's** specifications.

(a) If portions of ~~a~~ the ~~p~~**P**roposal to any solicitation are deemed unacceptable or non-responsive to the **RFP's** specifications of the solicitation, the ~~p~~**P**roposal **in its entirety** will be deemed non-responsive and will not be given further evaluation or consideration, **unless a clarification of portions of the Proposal results in a determination that it meets the RFP's specifications.** If a ~~p~~**P**roposal to any solicitation is delivered late, it will be deemed non-responsive to the specification of the solicitation, **will not be given further evaluation or consideration,** and will be returned to the ~~p~~**P**roposer unopened.

(b) Submission of ~~p~~**P**roposals must be in written hard copy or electronic format and **must be** delivered ~~as required by~~ **according to** the **RFP's** specifications of the solicitation. OEBB is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the **SPC or** designated OEBB recipient **designee as specified in the RFP** by the closing date and time stated in the RFP.

~~(76)~~ Evaluation. ~~The Selection Committee will evaluate~~ ~~p~~**P**roposals **will be evaluated** only in accordance with **the** criteria set forth in the RFP and applicable law. **OEBB staff, Consultants, or other persons designated by OEBB** ~~The Selection Committee and/or Consultants will~~ **may** provide their recommendations to the Board on **determining the Competitive Range and selecting** the apparent successful proposer **ASP(s).**

~~(87)~~ Rejection of ~~p~~**P**roposal. ~~The Board~~ **OEBB** may reject any ~~p~~**P**roposal for good cause and deem it as non-responsive upon written finding that it is in the **best interest of Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees** states', Educational Entities', or Employees, Early Retirees and their Dependents' interest to do so or acceptance of the ~~p~~**P**roposal may impair the integrity of the procurement **RFP** process. ~~The Board~~ **OEBB** will notify the ~~p~~**P**roposer of **the** its rejection of the proposal in writing and provide the good cause justification and finding. OEBB 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~~ **OEBB** may reject any Proposal upon OEBB's finding that the Proposal:

(a) Is contingent upon OEBB's acceptance of terms and conditions (including **the RFP Specifications and requirements**) 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 **RFP's** specifications of the RFP **or requirements;**

(e) Is late;

- (f) Is not in substantial compliance with the RFP;
- (g) Is not in substantial compliance with all prescribed pProcedure 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.

~~(98)~~ Intent to award, discuss, or negotiate. After the protest period provided in subsection ~~(43)~~(a) expires or after the Board OEBB has provided a final response to any protest, whichever date is later, the Board OEBB may engage in discussions and negotiations with pProposers in the eCompetitive rRange.

~~(109)~~ Discussions and negotiations. If the Board OEBB chooses to ~~enters~~ enters into discussions and negotiations with the Proposers in the eCompetitive rRange, ~~it~~ the Board will proceed as follows:

- (a) Initiating discussions. ~~The Board~~ OEBB must initiate oral or written discussions and negotiations with all of the pProposers in the eCompetitive rRange ~~regarding their proposals.~~
- (b) Conducting discussions. ~~The Board~~ OEBB may conduct discussions and negotiations with each pProposer in the eCompetitive rRange as necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions or negotiations with each pProposer. ~~The Board~~ OEBB may terminate discussions and negotiations with any pProposer in the eCompetitive rRange 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 OEBB and any designated representatives its designees:

- (A) Will treat all pProposers fairly and will not favor any pProposer over another.
- (B) Will not discuss pProposers' pProposals with any other pProposers. ~~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.~~

~~(CD)~~ Will determine whether other factors such as ~~including but not limited to,~~ Oregon residency of the primary business office and pProposer demonstration of services and products, will be used to determine the ~~apparent successful proposer~~ ASP, if a tie between pProposers occurs. OEBB may consider any factors that it deems are in the public interest.

- (c) At any time during the period allowed for discussions and negotiations, the Board OEBB may:
  - (A) Continue discussions and negotiations with a particular pProposer or pProposers; or
  - (B) Terminate discussions with a particular pProposer and continue discussions with other pProposers in the eCompetitive rRange.
  - (d) ~~The Board~~ OEBB may continue discussions and negotiations with pProposers until determining who will be awarded contracts.

~~(1140)~~ Notice of intent to award. ~~The Board~~ OEBB will provide written notice to all pProposers of its intent to award the contract or contracts resulting from the RFP, unless otherwise provided specified in the RFP. ~~The Board's~~ OEBB'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~~ OEBB's written response to all timely filed protests that denies the protests and affirms the award.

~~(1241)~~ Right to protest award. An adversely affected or aggrieved ~~p~~Proposer may submit to the Board a written protest of the Board's intent to award **to the SPC**. 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 ~~p~~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.

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

(d) ~~The Board, OEGB staff, or their designee~~ **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, **OEGB staff, or their designee** Chair, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available **only as** if provided by statute.

~~(1312)~~ Award of contracts. ~~The Board~~ **OEGB** will approve the apparent successful proposer **ASP(s), taking into consideration any recommendations made by OEGB staff, Consultant, or designees and** based on the Selection Committee and/or Consultants recommendation and the evaluation criteria included in OAR 111-002-0005(3) and the RFP. **Selection criteria may include**, including, but **is** not limited to, ~~e~~Contractor or ~~e~~Consultant availability; capability; experience; approach; compensation requirements; **financial standing**; previous litigation and remedy applied; customer service history with ~~the OEGB~~ **and the** members and clients **customers it serves**; debarment status; and references.

~~(13)~~ Confidentiality: ~~Until after the notice of intent to award and contract is issued, Proposals are not required to be open for public inspection, and OEGB 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. There will be no public opening of proposals. OEGB will not disclose the content of proposals, the number of proposals submitted, or the names of the proposers that submitted proposals until after the notice of intent to award. That information may then be obtained by means of a "Public Records Request" submitted to OEGB. The Intent to Award letter sent to each individual proposer will include the name of the Apparent Successful Proposer and the name and ranking of each proposer that ranked higher than the individual proposer receiving the Intent to Award letter. After the notice of intent to award and contract is issued, OEGB 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) Contract. The successful proposer **ASP(s)** must promptly execute the contract after the award is final and all contractual terms and conditions have been negotiated and agreed upon, **consistent with any timeline(s) included in the RFP**. ~~The Board Chair, or designee~~ **OEGB** will execute the contract only after it has obtained all applicable required documents **and approvals**. ~~and contractor signatures.~~

111-005-0042

Intermediate Procurement Process

**Except as provided under OAR 111-005-0046 or 111-005-0048, OEGB will use the following procedure** For 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 Selection procedure. OEGB will contact a minimum of three Proposers known to OEGB to be qualified to provide the work and services sought.**

~~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 p Proposals must comply with the RFP's OEGB's specifications for the Intermediate Procurement.** ~~If portions of the pProposal to any solicitation are deemed unacceptable or non-responsive to the specifications of the solicitation, the pProposal may will be deemed non-responsive. OEGB may give the Proposer an opportunity to submit a responsive Proposal. 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 pProposals must be in written hard copy or electronic format and delivered as required by meet the specifications for the Intermediate Procurement. 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 OEGB.~~

~~(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) Opening. There will be no public opening of proposals. OEGB will not disclose the content of proposals, the number of proposals submitted, or the names of the proposers that submitted proposals until after the notice of intent to award. That information may then be obtained by means of a "Public Records Request" submitted to OEGB. The Intent to Award letter sent to each individual proposer will include the name of the Apparent Successful Proposer and the name and ranking of each proposer that ranked higher than the individual proposer receiving the Intent to Award letter.~~

**(34) Evaluation. OEGB** ~~The Selection Committee will evaluate pProposals only in accordance with criteria set forth in the RFP and applicable law Intermediate Procurement. The Selection Committee and/or Consultants will provide their recommendations to the Board on the apparent successful proposer(s).~~

**(45) Discussions and negotiations. If the Board OEGB chooses to enter into discussions and negotiations with a the pProposer under this Intermediate Procurement procedure, the Board OEGB will do so consistent with 111-005-0010.**

~~(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.~~

**(56) Notice of intent to award. The Board OEGB will provide written notice to all pProposers under an Intermediate Procurement of its 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.~~

~~(67) Right to protest award. An adversely affected or aggrieved pP~~Proposer may submit to the Board **OEBB** a written protest of **OEBB's** ~~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 **by OEBB**.

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

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

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

(B) ~~the Board~~ **OEBB** committed a substantial violation of a provision in the RFP **its Intermediate Procurement procedure** or of an applicable procurement statute or administrative rule.

(c) **OEBB** ~~The Board~~ will not consider a protest submitted after the time period specified in this section or a different period if provided in the **specifications of the Intermediate Procurement RFP**.

(d) The Board ~~Chair,~~ **OEBB staff,** or **their** 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~~ **OEBB staff,** or **their** designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

~~(8) Award of contracts. The Board will approve the apparent successful proposer(s) based on the evaluation the Selection Committee and/or Consultant recommendation and the 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.~~

~~(9) Confidentiality: Until after the notice of intent to award and contract is issued, Proposals are not required to be open for public inspection, and OEBB 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 and contract is issued, OEBB 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.~~

(10) Contract. The successful pPProposer must promptly execute the eCContract after the award is final. The Board Chair, or designee, will execute the eCContract only after it has obtained all applicable required documents **and approvals** and contractor signatures..

~~(11) An amendment for additional services 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 sSmall pPProcurement, OEBB may procure eCContractor services in any manner it deems practical, including by direct selection, negotiation and award.

~~(1) The Board Chair delegates authority to the OEBB Administrator and Deputy Administrator to enter into contracts on behalf of the Board.~~

~~(12)~~ Award of eContracts. ~~OEBB~~ The OEBB Administrator or 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 OEBB, members and clients; debarment status; and references. Emphasis will be placed on quality customer service, creativity, affordability, and innovation and the improvement of employee health.

~~(23)~~ Contract. The selected eContractor must promptly execute the eContract. The OEBB Administrator or Deputy Administrator will execute the eContract only after obtaining all applicable required documents and approvals. ~~and contractor signatures.~~

~~(34)~~ An amendment for additional services shall not 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 OEBB may award a eContract for ~~Benefits~~ Benefit Plans or services without competition when the Administrator of OEBB determines in writing that the Benefit Plans or services are available from only one source, or the eContractor is defined as a Qualified Rehabilitation Facility as defined in Oregon's ~~p~~Public eContracting eCode.

(1) The determination of a ~~s~~Sole sSource Procurement must be based on written findings that may include, but are not limited to, the following:

- (a) That the efficient utilization of existing Benefit Plans or services requires the acquisition of compatible services;
- (b) That the Benefit Plans or services required for the exchange of software or data with other public or private agencies are available from only one source;
- (c) That the Benefit Plans or 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, OEBB shall negotiate with the sole source organization or Person to obtain eContract terms advantageous to OEBB.

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

**111-005-0047**

### **Renewal Process**

~~(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.~~

Renewal process. ~~(2) The Board~~ OEBB may renew eContracts with ~~renewal eContractors~~ for as many years as the Board OEBB determines is in the best interest of the state, Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees. ~~Educational Entities and Employees, Early Retirees and their Dependents.~~

~~(3) The Board~~ OEBB may invite renewal ~~P~~proposals from those Contractors or Vendors who provided the same or similar ~~employee-Benefit Plans~~ or other services in the year immediately prior. A ~~n-employee-Benefit Plan~~ or other services eContract is similar if it is reasonably related to the scope of work described in the ~~p~~Procurement under which such a cContract was awarded.

111-005-0048

### **Emergency Contract ~~Process~~ Procedure**

The Board **OE~~B~~B** may select a ~~e~~**C**ontractor to provide ~~b~~**B**enefits **Plans or services** without following any of the procedures under OAR 111-005-0040, 111-005-0042, 111-005-0044, or 111-005-0046 when required by ~~e~~**E**mergency. ~~The Board OE~~B~~B~~ will determine if an ~~e~~**E**mergency exists, declare the ~~e~~**E**mergency, and negotiate a ~~e~~**C**ontract with the ~~e~~**C**ontractor based on the following criteria: ~~e~~**C**ontractor availability; capability; experience; approach; compensation requirements; previous litigation and remedy applied; customer service history with the OE~~B~~B, members and clients; debarment status; and references. ~~The Board OE~~B~~B~~ 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, **affordability**, and innovation and the improvement of employee health.

111-005-0050

### **Mistakes**

(1) Treatment of mistakes. If ~~the~~ OE~~B~~B discovers certain mistakes in a ~~p~~**P**roposal before award of the ~~e~~**C**ontract, and the mistakes are not identified as those qualifying as non-responsive to the specifications of the ~~p~~**P**rocedure, ~~the~~ OE~~B~~B may take the following action:

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

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

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

(3) If ~~the~~ OE~~B~~B discovers mistakes in the ~~p~~**P**roposal after award, and the mistakes are not considered minor, ~~the Board OE~~B~~B~~ reserves the right to determine if the award will be revoked. ~~The Board OE~~B~~B~~ will then re-evaluate ~~p~~**P**roposals deemed to be in second, third, fourth, etc., in the standings.

111-005-0055

### **Responsible Proposer**

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

(2) In determining whether a Proposer has met the standards of responsibility, OE~~B~~B 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. OEGB shall document the Proposer's record of performance if OEGB finds under this paragraph that the Proposer is not responsible.

(c) Has a satisfactory record of integrity. ~~OEGB~~ In evaluating the Proposer's record of integrity, **OEGB** 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. OEGB shall document the Proposer's record of integrity if OEGB finds under this paragraph that the Proposer is not responsible.

(d) Is legally qualified to contract with OEGB.

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

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

(3) OEGB may refuse to disclose outside of OEGB 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 OEGB has authority under ORS 192.410 to 192.505 to withhold the identified information from **public** disclosure.

**111-005-0080**

### **Contract Amendments**

OEGB may amend a **eContract** without additional competition in any of the following circumstances:

(1) The amendment is within the scope of the **underlying pProcurement** ~~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.

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

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

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

(a) The **work or Sservices** to be provided under the amended **eContract** are the same as the **work or Sservices** to be provided under the unamended **eContract**.

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

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