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ARCHIVES DIVISION  
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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 111  
OREGON HEALTH AUTHORITY  
OREGON EDUCATORS BENEFIT BOARD

**FILED**  
01/16/2019 3:41 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: In the matter of amending Procurement and Contracting for Benefit Plans and Services

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/28/2019 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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500 Summer Street NE, E-88  
Salem, OR 97301

Filed By:  
April Kelly  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 02/20/2019

TIME: 10:30 AM

OFFICER: OEGB Staff

ADDRESS: DHS Barbara Roberts

Building

500 Summer Street NE

Room 559

Salem, OR 97301

NEED FOR THE RULE(S):

The purpose of this administrative rule amendment is to align OEGB's procurement rules with the public procurement code, which allows state agencies to pursue a small procurement when the cost of goods or services does not exceed \$10,000. ORS 279B.065 reads:

"279B.065 Small procurements. (1) A contracting agency may award a procurement of goods or services that does not exceed \$10,000 in any manner the contracting agency deems practical or convenient, including by direct selection or award. A contract awarded under this section may be amended to exceed \$10,000 only in accordance with rules adopted under ORS 279A.065.

(2) A contracting agency may not artificially divide or fragment a procurement so as to constitute a small procurement under this section. [2003 c.794 §53; 2005 c.64 §1; 2005 c.103 §8b; 2013 c.66 §1]"

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The public contracting code was consulted, as well as the Dept. of Justice's model rules for public contracting in order to align OEGB rules governing small procurements (see ORS 279A and 279B, as well as OAR Chapter 137).

FISCAL AND ECONOMIC IMPACT:

These proposed administrative rules are not predicted to have a fiscal or economic impact.

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**COST OF COMPLIANCE:**

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

No fiscal impact was identified. There are no OEGB entities that are considered a small business in Oregon.

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**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

Not applicable. There are no OEGB entities that are considered a small business in Oregon. Since small businesses are not impacted by the proposed rule changes, none were invited to participate in the development of this proposed rule.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?**

The Administrative Rule Advisory Committee was not consulted because amendments being made are to align OEGB's procurement rules with the public procurement code. This rule amendment should not have any impact on our entities operations or members' benefits.

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**AMEND: 111-005-0020**

**RULE SUMMARY:** The purpose of this administrative rule amendment is to align OEGB's procurement rules with the public procurement code, which allows state agencies to pursue a small procurement when the cost of goods or services does not exceed \$10,000. ORS 279B.065 reads:

"279B.065 Small procurements. (1) A contracting agency may award a procurement of goods or services that does not exceed \$10,000 in any manner the contracting agency deems practical or convenient, including by direct selection or award. A contract awarded under this section may be amended to exceed \$10,000 only in accordance with rules adopted under ORS 279A.065.

(2) A contracting agency may not artificially divide or fragment a procurement so as to constitute a small procurement under this section. [2003 c.794 §53; 2005 c.64 §1; 2005 c.103 §8b; 2013 c.66 §1]"

**CHANGES TO RULE:**

**111-005-0020**

**Definitions ¶¶**

For the purposes of OARs 111-005-0010 through 111-005-0080 the following definitions will apply:¶¶

(1) "Apparent Successful Proposer" or "ASP" means an organization selected as a result of a competitive and completed Procurement process.¶¶

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

(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.¶¶

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

(a) Assist in acquiring adequate Benefit Plan coverage for Eligible Employees, Dependents, Eligible Domestic

Partners, and Eligible Early Retirees;¶

(b) Assist in the study of all matters connected with the provision of adequate Benefit Plan coverage for Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees;¶

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

(d) Design and implement additional programs to review, monitor and assist in health improvement for Eligible Employees, Dependents, Eligible Domestic Partners, and Eligible Early Retirees; and¶

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

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

(8) "Emergency" means circumstances that:¶

(a) Could not have been reasonably foreseen;¶

(b) Create a substantial risk of loss, damage or interruption of Benefit 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.¶

(9) "Extensive Procurement" means the process of soliciting Proposals and Bids and selecting a Contractor for services amounting to \$150,000 and over.¶

(10) "Intermediate Procurement" means the process of soliciting Proposals and Bids and selecting a Contractor for services amounting to under \$150,000 but over \$10,000.¶

(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.¶

(13) "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.¶

(14) "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.¶

(16) "Proposal" means a competitive document, binding on the Proposer and submitted in response to a RFP.¶

(17) "Proposer" means a Person submitting a proposal in response to a RFP.¶

(18) "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.¶

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

(20) "Responsible Proposer" means a Person who meets the standards of responsibility described in OAR 111-005-0055.¶

(21) "Responsive Proposal" means a Proposal that substantially complies with the RFP and all prescribed Procurement procedures and requirements.¶

(22) "Selection Committee" means the group of individuals appointed or approved by the Board to review, evaluate and score Proposals received as part of an Intermediate or Extensive Procurement.¶

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

(24) "Small Procurement" means the process of securing Contractors or Consultants for services amounting to ~~\$5,000 or less~~ less than \$10,000.¶

(25) "Sole Source" means the only Contractor or Consultant 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.

Statutory/Other Authority: ~~Ch. 7 OL 2007~~ ORS 243.860 to 243.886

Statutes/Other Implemented: ~~Sec. 19, Ch. 7 OL 2007~~ ORS 243.864(1)(a)