

DIVISION 5

PROCUREMENT AND CONTRACTING FOR BENEFIT PLANS AND SERVICES

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 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 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 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. OEBC is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEBC 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 Selection Committee and/or Consultants will provide their recommendations to the Board on the apparent successful proposer(s).

(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', 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. The Board will notify the

proposer of its rejection of the proposal in writing and provide the good cause justification and finding. OEBC 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.

(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 approve the apparent successful proposer(s) based on the Selection Committee and/or Consultants recommendation and 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 OEGB, members and clients; 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 OEBC. 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, 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) 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.

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. OEBC is not responsible for unreadable or incomplete electronic transmissions of proposals or for electronic transmissions that are not received by the designated OEBC 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) Opening. There will be no public opening of proposals. OEBC 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 OEBC. 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. The Selection Committee will evaluate proposals only in accordance with criteria set forth in the RFP and applicable law. 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 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.

(56) 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.

(67) 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.

~~(78)~~ 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 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.

~~(89)~~ Confidentiality: Until after the notice of intent to award and 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 and 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.

~~(910)~~ 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.

(~~10~~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.

Stat. Auth.: ORS 243.860 – 243.886

Stats. Implemented: ORS 243.864