

University Standard 03-010

## Procurement Thresholds and Methods

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### 1. Policy Statement

- 1.1. The university's standards for the procurement of goods, services and construction establish sound, transparent, clear and modern procurement thresholds and methods that reflect best practice. This university standard works in conjunction with University Standard 03-015 *Procurement Solicitations and Contracts*.

### 2. Reason for Policy

- 2.1. The university routinely procures goods and services to support its mission. In supporting student success, research, and outreach, the university seeks to deliver maximum value through its contracting services, sourcing of goods and services, spending and revenue management, supplier diversity program management, and materials and resource management. This university standard sets maximum dollar thresholds and allowable methods of competitive and non-competitive procurement of goods, services and construction in compliance with state and federal laws, regulations and best practice.

### 3. Scope & Audience

- 3.1. This university standard applies to the university's public procurement and contracting activities for goods, services and construction.
- 3.2. The following are not public procurement or contracting activities:
  - 3.2.1. Contracts between the university and another university or college, governmental bodies or agencies, tribal governing bodies or agencies, the federal government, and a nation or a governmental body in a nation other than the United States.
  - 3.2.2. Agreements that disburse funds to other entities through a subaward or subagreement.

- 3.2.3. Contracts for the sale of university property, equipment or by product of research.
- 3.3. This university standard applies to all university employees engaged in the procurement of goods, services or construction for the university.

## 4. Definitions

- 4.1. **Amendment:** An agreed to addition to, deletion from, correction or modification of agreement or contract.
- 4.2. **Award:** The presentation of a contract to the selected offeror.
- 4.3. **Competitive process:** A method by which the university attempts to obtain offers from adequate number for favorable terms which may include price, quality, promptness of delivery, and/or service for the same specifications and requirements.
- 4.4. **Construction:** Any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure, or preparation of a building site.
- 4.5. **Contract:** All types of agreements, regardless of what they may be called, for the acquisition of goods, services or construction.
- 4.6. **Contract price:** The maximum monetary obligation the university either will or may incur under a contract including any addenda, approved alternates, bonuses, incentives and contingency amounts if the contractor fully performs under the contract. The contract price includes all phases of work known or anticipated at the time of award even if such phases are anticipatory or contingent on other factors.
- 4.7. **Contractor:** Any entity having a contract with the university to furnish goods, services or construction.
- 4.8. **Emergency:** An unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, or threat to public health or safety that requires prompt action to remedy the condition.
- 4.9. **Entity:** A natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company, limited partnership, profit or non-profit unincorporated association, business trust, two or more persons having a joint or common economic interest, or a government or governmental subdivision.
- 4.10. **Offeror:** An entity who submits a response to a solicitation document.

- 4.11. **Reserve contract:** A legally binding agreement that may be awarded as a result of the reserve contracting program to provide services on an as-needed and non-exclusive basis for the university.
- 4.12. **Sole source:** The only entity or only suitable entity of a particular product or service reasonably available, including when only one source can meet critical parameters or timeframes in order to meet the research and/or business needs of the university.
- 4.13. **Solicitation document:** A document used in a formal procurement soliciting two or more qualified sources by public notice for the same specifications and requirements.
- 4.14. **Specifications:** A description of the physical, functional, or performance characteristics, or of the nature of the goods, services or construction, including any requirement to be satisfied by a product, material or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied.

## 5. Responsibilities & Procedures

### 5.1. General Procurement Threshold

- 5.1.1. When purchasing or contracting under general procurement methods, the following general procurement thresholds apply based on the anticipated contract price:
  - a. \$25,000.00 or less — Direct Procurement (micro-purchase);
  - b. \$25,000.01 to \$250,000.00 — Informal Procurement (small purchase); and,
  - c. Greater than \$250,000.00 — Formal Procurement.
- 5.1.2. Procurement and Contract Services may reduce the general procurement thresholds for specific procurements, groups of procurements, or all procurements through unit rules in order to comply with federal, state or local regulations, or if determined by the university to be in its best interest.

### 5.2. General Procurement Methods

- 5.2.1. When acquiring goods, services or construction, outside of the procurement methods identified in Sec. 5.3 or Sec. 5.6, the university will use one of the following general procurement methods established in this university standard corresponding to the general procurement threshold based on the anticipated contract price:
  - a. Direct procurement (micro-purchase). A simplified process for purchases within the threshold set in Sec. 5.1.1.a where the university may award contracts to an entity

to provide goods, services or construction without a competitive process if the price is considered to be reasonable. The university may use other general procurement methods if deemed beneficial. To the extent practicable direct procurements should be distributed equitably among qualified entities.

- b. Informal procurement (small purchase). A competitive process for purchases within the threshold set in Sec. 5.1.1.b that is relatively simple and informal where the university obtains prices, rates or competitive offers from an adequate number of entities. The university may use other general procurement methods, except the direct procurement method, if deemed beneficial.
- c. Formal procurement. A competitive process, which includes but is not limited to bids and proposals, for purchases within the threshold set in Sec. 5.1.1.c where the university creates a solicitation document containing the procurement procedures and specifications, publishes a notice of the procurement on the university's sourcing website for a reasonable duration and conducts the procurement in accordance with University Standard 03-015. The university may use other general procurement methods, except the direct procurement method and informal procurement method, if deemed beneficial.
- d. Joint procurement. A process reasonably equivalent to the respective processes required by the anticipated contract price where the university and a state, government, Indian tribe, institution of higher education, or nonprofit organization jointly conduct a procurement for common or shared goods, services or construction.
- e. Cooperative procurement. Use of a contract already established by a federal, state, government, Indian tribe, institution of higher education, or nonprofit organization to acquire specific goods, services or construction when the contract resulted from a competitive process reasonably equivalent to the process required by the anticipated contract price.
- f. Noncompetitive procurements using any funding. The university need not follow a competitive process, regardless of value, if:
  - i. Acquiring goods, services and construction from a sole source and with the approval of the Vice President for Finance and Administration, or Chief Procurement Officer, or designee;
  - ii. In the event of an emergency;
  - iii. The federal awarding agency or pass-through, in response to the university's written request, expressly authorizes a noncompetitive procurement;

- iv. After requesting offers from a number of entities, competition is determined inadequate; or,
  - v. Other procurement and contracting of the university as required and allowable by other provisions of law.
- g. Noncompetitive procurements using non-federal funding. The university need not follow a competitive process, regardless of value, if:
- i. The procurement is a specific case, class or category that is restricted, impractical, or unreasonable for a competitive process and approved by the Vice President for Finance and Administration, or Chief Procurement Officer or designee; or,
  - ii. The procurement substantially promotes the public interest in a manner that could not practicably be realized by complying with other processes described in this university standard with approval from the following: the Vice President for Finance and Administration or designee.

5.2.2. Notwithstanding Sec. 5.2.1, if the funding source for the procurement has additional or more stringent requirements than those set forth in this standard, the university will comply with the funding source's requirements, provided those requirements are otherwise lawful.

### 5.3. Alternative Procurement

5.3.1. A competitive process authorized by the Vice President for Finance and Administration, or Chief Procurement Officer or designee, as an alternative procurement that provides competitive opportunities to multiple entities for the provision of goods, services or construction to the university through a process equivalent to the process required by the anticipated contract price. Alternative procurements must meet one of the following objectives: responds to innovative business or market practices; contributes to increased efficiency or effectiveness; or, provides comprehensive cost savings or increased value. Alternative procurements shall be used on only non-federal funded procurements or any procurement within the direct procurement method.

### 5.4. Reserve Contracting Program

5.4.1. Procurement and Contract Services may maintain a reserve contracting program for a variety of services. Reserve contracting programs may not be used on federal funded procurements except procurements within the direct procurement threshold. Reserve contracting programs will be established in accordance with this subsection.

- 5.4.2. Opportunities for participation in a reserve contracting program for specific service(s) will be established as needed. Opportunities will be advertised on the university's sourcing website for the entire period that the reserve contracting program is open and available for entities to submit responses in accordance with the solicitation document. The university may open a reserve contracting program for a specific service at any time but each cycle of the reserve contracting program may not exceed a period of ten years.
- 5.4.3. Entities that meet the minimum qualifications may be offered a contract or accepted into a qualified reserve group in accordance with the practice identified in the solicitation document. Provision of services is on a non-exclusive as-needed basis.

### 5.5. Reserve Contracting Thresholds

- 5.5.1. When purchasing or contracting for goods, services or construction under the reserve contracting program, the following reserve contracting thresholds apply based on the anticipated contract price:
  - a. \$250,000.00 or less — Targeted Reserve Contracting;
  - b. \$250,000.01 to \$500,000.00 — Limited Reserve Contracting; and,
  - c. \$500,000.01 to \$2,000,000.00 — Comprehensive Reserve Contracting.
- 5.5.2. Procurement and Contract Services may reduce reserve contracting thresholds for specific procurements, groups of procurements, or all procurements through unit rules in order to comply with federal, state or local regulations, or if determined by the university to be in its best interest.

### 5.6. Reserve Contracting Procurement Methods

- 5.6.1. When acquiring goods, services or construction, outside of the general procurement methods identified in Sec. 5.2, the university will use one of the following reserve contracting procurement methods corresponding to the type of service and reserve contracting threshold based on the anticipated contract price:
  - a. Targeted Reserve Contracting Procurement. A simplified procedure for purchases within the reserve contracting threshold set in Sec. 5.5.1.a where the university targets a single entity that has a reserve contract or has been accepted into a qualified reserve group. To the extent practicable targeted reserve contracting procurements should be distributed equitably among qualified entities.
  - b. Limited Reserve Contracting Procurement. A competitive process for purchases within the reserve contracting threshold set in Sec. 5.5.1.b that is relatively simple

and informal where the university obtains prices or rates from an adequate number of entities that have a reserve contract or have been accepted into a qualified reserve group. The university may use other reserve contracting procurement methods, except the targeted reserve contracting procurement method, if deemed beneficial.

- c. Comprehensive Reserve Contracting Procurement. A competitive process for purchases within the threshold set in Sec. 5.5.1.c where the university issues a solicitation document containing the procurement procedures and specifications, publishes a notice of the procurement on the university's sourcing website for a reasonable duration and offers the opportunity to all entities that have a reserve contract or have been accepted into a qualified reserve group.

### **5.7. Conflict of Interest**

- 5.7.1. All procurement and contracting activities must be undertaken in compliance with university policies, standards, and rules on ethics and conflicts of interest and with Oregon Revised Statute Chapter 244 (government ethics).

### **5.8. Business Inclusion and Diversity Program**

- 5.8.1. The university encourages participation of certified diverse businesses by maintaining a Business Inclusion and Diversity Program within the university's Procurement and Contracts unit rules, policies and procedures. The Business Inclusion and Diversity Program is limited to businesses certified by the state of Oregon in accordance with Oregon Revised Statute 200.055. Self-certified businesses will be included only in reports produced by the university that detail spend associated with certified and self-certified businesses.

### **5.9. Brand-Name Specifications**

- 5.9.1. Brand-Name Specification. For non-federally funded purchases the university may specify brand names in the procurement of goods and construction if a particular product or service has attributes not found in other products and services of like kind. In addition, when specific design or performance specifications must be met for goods to be purchased, the university may specify a list of qualified goods by reference to the qualified goods. For purchases using federal funding brand name or equal must be used.

### **5.10. Contract Amendments and Expired Contracts**

- 5.10.1. An amendment for additional work or goods that is closely related to the scope of work under the original solicitation document or contract, including change orders, extra work, field orders, or other change in the original specifications that increases the original contract price or length of time, may be made with the contractor

without using a competitive process provided that the amendment does not materially alter the contract.

5.10.2. An amendment that is not closely related to the scope of work under the original solicitation document or contract will require a new competitive process, unless approved by the Vice President for Finance and Administration or Chief Procurement Officer, or their designee.

5.10.3. Expired contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or Chief Procurement Officer, or their designee.

#### **5.11. Interest on Overdue Charges**

5.11.1. Overdue claims are those that have not been paid within forty-five (45) days, or as otherwise stated in the contract and agreed to by the university, from the latest of the following: receipt of an accurate invoice, receipt of the initial billing statement if no invoice is received, when all goods or services have been received, or the date the claim is made certain by agreement of the parties or by operation of law. However, overdue account charges will not accrue on any purchases made by the university during time of civil emergency or in the event of a natural disaster that prevents the timely payment of accounts. In such instances, accounts will be paid in as timely a manner as possible.

5.11.2. The maximum overdue charge will be at a rate of two-thirds of one percent per month, but not more than eight percent per annum.

#### **5.12. Authorization to Undertake Construction Projects**

5.12.1. Prior approval must be obtained from the President or designee to undertake any construction project with an anticipated total project cost of at least \$500,000 but not greater than \$5 million regardless of the source of funds or method by which the project is to be financed.

5.12.2. Prior approval must be obtained from the Board of Trustees in conformance with the Board Policy on Approval of Capital Projects for all capital projects, defined in Board policy as a project involving the construction, acquisition, renovation, modification, or expansion of the physical plant of the university, with a total project cost anticipated to exceed \$5 million regardless of the source of funds or method by which the project is to be financed. Prior approval must also be obtained for an increase to the budget of a Board-approved capital project where the total of all increases to the budget exceed \$5 million or ten percent (10%) of the approved budget.

### 5.13. Licensing

5.13.1. No contract will be awarded to any construction firm that is not licensed to do business in the State of Oregon, not registered or licensed by the appropriate state licensing boards, or listed as ineligible to enter into contracts or public improvement contracts by the Bureau of Labor and Industries.

### 5.14. Performance and Payment Bonds

5.14.1. Contractors will post and maintain performance and payment bonds as required in the solicitation document. For public improvement contracts with a total contract price in excess of \$150,000, one hundred percent performance and payment bonds will be required.

### 5.15. Retainage Processing Charges

5.15.1. The university may require a retainage for construction contracts under \$1,000,000. For construction contracts over \$1,000,000, the university will withhold a retainage.

5.15.2. The university will not retain an amount in excess of five percent (5 percent) of the contract price for work completed. If the contractor has performed at least fifty percent (50 percent) of the work and is progressing satisfactorily, upon the contractor's submission of written application containing the surety's written approval, the university may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The university will respond in writing to all such applications within a reasonable time. When the work is ninety-seven and a half percent (97.5 percent) completed, the university may, at its discretion and without application by the contractor, reduce the retained amount to one hundred percent (100 percent) of the value of the remaining unperformed work. The university may at any time reinstate retainage. Retainage will be included in the final payment of the contract price.

5.15.3. For construction contracts over \$1,000,000 the contractor may request that the retainage be deposited in an interest-bearing account at a financial institution. Title to such funds will remain with the Board of Trustees until the work is complete and accepted by the university. Interest on deposited retainage accrues to the benefit of the contractor and will remain in the retainage account until the work is accepted. The university may deduct fees necessary to open and maintain an interest-bearing account.

5.15.4. Alternatives to cash retainage. In lieu of cash retainage to be held by the university or financial institution, the contractor may substitute one of the following:

a. Deposit of securities:

- i. The contractor may deposit bonds or securities with the university or in any bank or trust company to be held for the benefit of the university. In such event, the university will reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the contractor.
  - ii. Bonds and securities deposited or acquired in lieu of retainage will be of a character approved by the Office of Finance and Administration, including but not limited to:
    - (a) Bills, certificates, notes, or bonds of the United States.
    - (b) Other obligations of the United States or its agencies.
    - (c) Obligations of any corporation wholly owned by the federal government.
    - (d) Indebtedness of the Federal National Mortgage Association.
  - iii. Upon the university's determination that all requirements for the protection of the university's interests have been fulfilled, it will release to the contractor all bonds and securities deposited in lieu of retainage.
- b. Deposit of surety bond. The university, at its discretion, may allow the contractor to deposit a surety bond in a form acceptable to the university in lieu of all or a portion of funds retained or to be retained. A contractor depositing such a bond will accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage will be reduced by an amount equal to the value of the bond and the excess will be reimbursed to the contractor.

5.15.5. Retainage cost recovery. The university will recover from the contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final contract payment.

#### **5.16. Appeals of University Pre-Contract and Award Decisions and Actions**

5.16.1. Exclusive Procedure. This Sec. 5.16 establishes the exclusive procedure for an allegedly aggrieved entity to appeal a university pre-contract award decision or action or a contract award decision.

5.16.2. Exhaustion of University Level Appeals. An allegedly aggrieved entity must timely exhaust all opportunities to appeal an appealable pre-contract award decision or action or contract award decision at the university level under this Sec. 5.16 before seeking judicial review of the university's decision or action.

5.16.3. Types of Appealable Decisions. For purposes of this Sec. 5.16, there are two types of appealable university decisions and actions:

- a. Pre-contract award (“process”) decisions or actions; and,
  - b. Contract award decisions, including notices of an intent to award a contract.
- 5.16.4. Permissible Reasons for Process Decision or Action Appeal. An allegedly aggrieved entity may file a university level appeal of a process decision or action only on the basis that the university violated or is violating federal or state law or university standards, policies, or procedures in the process.
- 5.16.5. Prerequisites for Process Decision or Action University Level Appeals. Prior to filing a university level appeal of a process decision or action, an allegedly aggrieved entity must provide written notice of the alleged violation to the university not later than seven days after the alleged violation or action occurred or the entity first became aware of the violation or arbitrary action, and receive a university response on the alleged violation.
- 5.16.6. Permissible Reasons for Contract Award Decision Appeal. An allegedly aggrieved entity may file a university level appeal of an award decision only for one or more of the following reasons:
- a. The university’s evaluation of offers or its subsequent award decision violates an applicable federal or state law or a university standard, policy, or procedure.
  - b. In the case of a sole source procurement, the entity selected is not the sole contractor or consultant reasonably available to provide the goods, services or construction, or combination thereof, at issue.
- 5.16.7. Prerequisites for Award Decision Appeals. An allegedly aggrieved entity may appeal an award decision only if the entity establishes that it is qualified and available to provide the goods, services or construction, or combination thereof, at issue.
- 5.16.8. Appeal Timelines, Address, and Markings.
- a. Process appeals: An allegedly aggrieved entity appealing a process award decision or action must deliver a written appeal to the university within seven days after the university response to a notice of an alleged violation.
  - b. Contract award appeals: An allegedly aggrieved entity appealing the award of a contract must deliver a written appeal to the university within seven days after the award of a contract or issuance of the notice of intent to award the contract, whichever occurs first.
  - c. All Appeals:
    - i. The written appeal must be delivered to the Oregon State University Chief Procurement Officer.

- ii. Written appeals must be clearly marked as an appeal and identify the solicitation, contract, or award at issue.
- iii. Late written appeals will not be considered.

#### 5.16.9. Required Contents of Written Appeal

- a. An allegedly aggrieved entity's written appeal must fully specify all the reasons and bases for the appeal, including a discussion of all relevant facts and any federal or state laws or university standards, policies, or procedures at issue; the entity's satisfaction of any prerequisites for the appeal; and all ways in which the entity has been aggrieved or adversely affected.
- b. The written appeal must include all evidence that the allegedly aggrieved entity wants the university to consider, including copies of any relevant documents. Failure to include any reason for the appeal or any evidence in support of it will constitute a final, knowing, and voluntary waiver of the right to assert such reason or evidence.

#### 5.16.10. University Appeal Authority, Decision, and Contract Awards.

- a. The university Vice President for Finance and Administration or that person's designee has the authority to decide written appeals for the university under this Sec. 5.16.
- b. In deciding appeals under this Sec. 5.16, the Vice President for Finance and Administration or designee will consider the contents of the written appeal and the university's procurement records pertinent to the appeal. The Vice President for Finance and Administration or designee, in his or her sole discretion, also may confer with and seek advice from university procurement staff or university legal counsel about any factual, policy, or legal issues raised by the written appeal.
- c. The Vice President for Finance and Administration or designee will issue a final written order on the appeal in a timely manner.
- d. The final written order may affirm, reverse, or modify the university's decision or action at issue in whole or in part.
- e. If the Vice President for Finance and Administration or designee determines in the final written order that the reasons for an award decision appeal are meritorious, in whole or in part, then the university may, in its sole discretion, either award the contract, in whole or in part, to the appealing entity or cancel the competitive solicitation.

- f. The university may make a contract award prior to issuance of the final written order if the award is authorized by the Vice President for Finance and Administration or designee.

5.16.11. Judicial Review. Judicial review of a university solicitation process decision or action or contract award decision is available pursuant to the pertinent provisions of ORS Chapter 34.

## 6. Forms & Tools

- 6.1. None.

## 7. Frequently Asked Questions

- 7.1. None.

## 8. Related Information

- 8.1. University Standard 03-015 *Procurement Solicitations and Contracts*: [http://policy.oregonstate.edu/UPSM/03-015\\_procurement\\_solicitations\\_contracts](http://policy.oregonstate.edu/UPSM/03-015_procurement_solicitations_contracts)
- 8.2. Procurement and Contract Services (PaCS) Manual: <https://fa.oregonstate.edu/pacs-manual>

## 9. History

- 9.1. Adopted by OSU: July 1, 2014, as OAR 580-061, 580-062, and 580-063.
- 9.2. Amended: January 2019. The three original OARs were consolidated into University Standards 03-010 and 03-015.
- 9.3. Amended: Housekeeping, September 2019.
- 9.4. Last review date: January 2019
- 9.5. Next scheduled review date: January 2022

## 10. Website

- 10.1. University Standard 03-010 *Procurement Thresholds and Methods*: [http://policy.oregonstate.edu/UPSM/03-010\\_procurement\\_thresholds\\_methods](http://policy.oregonstate.edu/UPSM/03-010_procurement_thresholds_methods).

**11. Contacts**

<b>Department</b>	<b>Phone Number</b>	<b>Website</b>
<b>Procurement and Contract Services</b>	541-737-4261	<a href="http://pacs.oregonstate.edu/pacs">http://pacs.oregonstate.edu/pacs</a>