



University Standard 03-015

Procurement Solicitations and Contracts

1. Policy Statement

- 1.1. This university standard for procurement solicitations and contracting creates an open, fair, transparent and competitive environment to obtain best value for purchases, establishes contracting requisites. This university standard works in conjunction with University Standard 03-010 *Procurement Thresholds and Methods*.

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 provides a framework in which Procurement and Contract Services conducts acquisitions for goods, services and construction. It guides fair and open competition while minimizing risk and maintaining flexibility in procurement activity.

3. Scope & Audience

- 3.1. This university standard applies to the university's formal solicitation process and contracting activities for goods, services and construction.

4. Definitions

- 4.1. All terms defined in this standard, have the meanings set forth in University Standard 03-010 unless set forth below, or unless the context requires otherwise.
- 4.2. **Addendum or addenda:** An addition to, deletion from, material change in, or general interest explanation of the solicitation document.

- 4.3. **Bid:** A binding offer submitted by an entity in response to an invitation to bid issued by the university.
- 4.4. **Bidder:** An entity that submits a bid in response to an invitation to bid.
- 4.5. **Change order:** A written alteration to a contract or purchase order, signed by the university in accordance with the terms of the contract, unilaterally directing the contractor to make changes.
- 4.6. **Closing:** The date and time specified in a solicitation document as the deadline for submitting offers.
- 4.7. **Days:** Calendar days, including weekdays, weekends, and holidays, unless otherwise specified.
- 4.8. **Invitation to bid:** A formal request to obtain competitive offers from entities including prices based on the specifications, scope of work and contractual terms and conditions identified in the request. This is a process where the basis for award of the contract, when all requirements or selected options included in the request are met, is price.
- 4.9. **Proposal:** A binding offer submitted by an entity in response to a request for proposal issued by the university.
- 4.10. **Proposer:** An entity that submits a response to a request for proposal issued by the university.
- 4.11. **Public improvement:** A project for construction, reconstruction, or major renovation on real property by or for the university. Public improvement does not include:
 - 4.11.1. Projects for which no funds of the university are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or,
 - 4.11.2. Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.
- 4.12. **Public work:** Defined by the Bureau of Labor and Industries (BOLI) in Oregon Revised Statute 279C.800 (6).
- 4.13. **Request for proposal:** A formal request to obtain competitive offers from entities including various information, which may or may not include pricing, based on the specifications, scope of work and contractual terms and conditions identified in the request. This is an evaluative process where the predominant criteria or basis for award of the contract is not price.

- 4.14. **Responsible:** When an entity has demonstrated their ability to perform satisfactorily under a contract by meeting the applicable standards of responsibility outlined in Sec. 5.16.3.i.
- 4.15. **Responsive:** When the solicitation response is substantially compliant in all material respects with the criteria outlined in a solicitation document.
- 4.16. **Sealed:** A solicitation response to a solicitation document that has not been opened by the university or a solicitation response delivered by electronic means that has not been distributed beyond university personnel responsible for receiving the electronically submitted solicitation response.
- 4.17. **Signed:** Any mark, word, or symbol that is made or adopted by an entity indicating an intent to be bound.
- 4.18. **Solicitation response:** A binding offer submitted by an entity in response to a solicitation document issued by the university.
- 4.19. **Work:** The furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire contract and carrying out and completion of all duties and obligations imposed by the contract.

5. Responsibilities & Procedures

5.1. Pre-Bid or Pre-Proposal Conferences

- 5.1.1. Pre-bid or pre-proposal conferences may be scheduled. Each pre-bid or pre-proposal conference will be described in the solicitation document as voluntary or mandatory. If such a conference is designated as mandatory, an offeror must attend in order to submit a solicitation response.
- 5.1.2. If the offeror is an individual, the offeror may authorize a representative to attend the pre-bid or pre-proposal conference.
- 5.1.3. Statements made by university representatives at the pre-bid or pre-proposal conference will not be binding unless a written addendum to the solicitation document is issued.

5.2. Bid or Proposal Security

- 5.2.1. The university may require submission of a security in the solicitation document. Security includes, but is not limited to, a surety bond from a surety company authorized to do business in the state of Oregon, cashier's check, certified check, or savings and loan secured check.

- 5.2.2. Security of all unsuccessful offerors will be returned or released after a contract has been executed and a performance bond provided (if such a bond is required), after all solicitation responses have been rejected or as deemed appropriate by the Chief Procurement Officer.

5.3. Addenda to Solicitation Document

- 5.3.1. The university may change a solicitation document by written addenda. The university will make reasonable efforts to notify potential offerors of such written addenda by methods that may include, but are not limited to, publication of the written addenda on the university's sourcing website or requiring submission of a notice of interest by potential offerors to receive addenda.
- 5.3.2. The university will issue a written addenda within a reasonable time prior to the closing to allow prospective offerors time to consider the addenda in preparing their solicitation responses. The university may extend the closing at any time if it determines prospective offerors need additional time to review and respond to addenda.

5.4. Requests for Clarification or Change

- 5.4.1. Requests for clarification or change of solicitation documents must be received by the university in writing by the date indicated in the solicitation document.
- 5.4.2. Such requests for clarification or change will include the reasons for the clarification or change, and any proposed changes to the solicitation document.
- 5.4.3. The university will consider all requests for clarification or change and, if appropriate, issue addenda to modify the solicitation documents.

5.5. Pre-Closing Modifications or Withdrawal of Solicitation Responses

- 5.5.1. Modifications. An offeror may modify its solicitation response in writing by submitting a modification request no later than the closing to the administrative contact and location specified in the solicitation document. Any modification must include a statement that the modification amends and supersedes the prior solicitation response and must clearly identify what in its solicitation response is modified.
- 5.5.2. Withdrawals. An offeror may withdraw its solicitation response by written notice, signed by an authorized representative of the offeror, no later than the closing by submitting the notice to the administrative contact and location specified in the solicitation document. The offeror, or authorized representative of the offeror, may also withdraw its solicitation response in person no later than the closing, upon

presentation of a written notice signed by an authorized representative of the offeror and evidence of appropriate identification satisfactory to the university.

5.6. Solicitation Responses are Offers

- 5.6.1. The solicitation response is an offer to enter into a contract that will be binding upon the offeror for ninety (90) days, unless a different time frame is specified in the solicitation document.
- 5.6.2. The solicitation response must be responsive to the solicitation document, unless offerors are specifically authorized by the solicitation document to take exceptions or to leave terms open to negotiation.
- 5.6.3. Unless expressly authorized by the solicitation document, offerors may not make their solicitation response contingent upon the university's acceptance of specifications or contract terms that conflict with or are in addition to those in the solicitation document.

5.7. Electronic Solicitation Responses

- 5.7.1. The university may authorize submission of solicitation responses through electronic methods.
- 5.7.2. For solicitation documents where the university permits submission via electronic means, the university must establish a method of receiving, identifying and recording the solicitation response while preserving the sealed requirement.
- 5.7.3. Solicitation responses submitted through electronic methods must be signed.
- 5.7.4. The university may open electronic solicitation responses to verify receipt of documents prior to the closing but will not verify responsiveness and will maintain the sealed aspect until after closing.

5.8. Solicitation Response Submissions

- 5.8.1. Identification of solicitation responses. To ensure proper identification and special handling, if any, the offeror must appropriately identify its solicitation response. The university will not be responsible for handling solicitation responses not identified appropriately.
- 5.8.2. Receipt of solicitation responses. It is the offeror's responsibility to ensure that solicitation responses are received by the university at the required location, no later than the closing as indicated in the solicitation document or any addenda, regardless of the method used to submit or transmit the solicitation response.

5.9. Late Solicitation Responses, Withdrawals, and Modifications

5.9.1. Any solicitation response, modification, or withdrawal received after the closing is late. The university will not consider late modifications, or withdrawals except as permitted in Sec. 5.11. Notwithstanding the foregoing, the university may, at its sole discretion, adopt policies or procedures to accept late solicitation responses in circumstances that are determined to be in the best interest of the university if the policies or procedures are stated in the solicitation document.

5.10. Information Disclosure

5.10.1. Unless otherwise specified in the solicitation document, the name of the offeror submitting a solicitation response is the only information that may be made public after closing until notice of the intent to award or an award has been issued.

5.11. Mistakes

5.11.1. Generally. To protect the integrity of the competitive process and to assure fair treatment of offerors, the university should carefully consider whether to permit waiver, correction, or withdrawal for certain mistakes.

5.11.2. Treatment of mistakes. The university will not allow an offeror to correct or withdraw a solicitation response for an error in judgment. If the university discovers certain mistakes in a solicitation response after closing, but before award of the contract, the university may take the following action:

- a. The university, in its sole discretion, may waive or permit an offeror to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the solicitation response or an insignificant mistake that can be waived or corrected without prejudice to other offerors. Examples of minor informalities include an offeror's failure to:
 - i. Return the correct number of signed solicitation responses or the correct number of other documents required by the solicitation document;
 - ii. Sign the solicitation response in the designated block, provided the solicitation response is signed elsewhere evidencing an intent to be bound or at the university's request, offeror confirms in writing their intent to be bound by their solicitation response; or,
 - iii. Acknowledge receipt of an addendum to the solicitation document, provided it is clear on the face of the solicitation response that the offeror received the addendum and intended to be bound by its terms, or the addendum involved did not affect price, quality, or delivery.
- b. The university may correct a clerical error if the error is evident on the face of the solicitation response and the offeror confirms the university's correction in writing.

A clerical error is an offeror's error in transcribing its solicitation response. Examples include, but are not limited to: typographical mistakes, errors in extending unit prices, transposition errors, and arithmetical errors in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices will prevail over extended prices.

- c. The university may permit an offeror to withdraw a solicitation response after closing based on one or more clerical errors in the solicitation response only if the offeror shows with objective proof and by clear and convincing evidence:
 - i. The nature of the error;
 - ii. That the error is not a minor informality under this subsection or an error in judgment;
 - iii. That the error cannot be corrected under Sec. 5.11.2.b;
 - iv. That the offeror acted in good faith in submitting a solicitation response that contained the claimed error and in claiming that the alleged error in the solicitation response exists;
 - v. That the offeror acted without gross negligence in submitting a solicitation response that contained a claimed error;
 - vi. That the offeror will suffer substantial detriment if the university does not grant it permission to withdraw the solicitation response; and,
 - vii. That the offeror promptly gave notice of the claimed error to the university.
- d. The criteria in Sec. 5.11.2.c will determine whether the university will permit an offeror to withdraw its solicitation response after closing. These criteria also will apply to the question whether the university will permit an offeror to withdraw its solicitation response without forfeiture of its bond (or other security) or without liability to the university based on the difference between the amount of the offeror's solicitation response and the amount of the contract actually awarded by the university, whether by award to the next lowest responsive, responsible offeror or the best responsive, responsible offeror or through a new solicitation.

5.12. Basis for Awarding Contracts

- 5.12.1. The university will select contractors and award contracts based on such factors as are identified in the solicitation document and/or such other factors as are reasonable under the circumstances.

5.13. Low Tie Bids

- 5.13.1. Definition. Low tie bids are low tied responsive, responsible bids that are identical in price, fitness, availability, and quality and that meet all the requirements and criteria set forth in the bid.
- 5.13.2. Award. In the event of a low tie bid, the university will award the contract based on the following order of precedence:
- a. A business that is certified by the state of Oregon in accordance with Oregon Revised Statute 200.055.
 - b. If Sec. 5.14.2.a does not apply or all of the firms are certified, award of the contract will be made by drawing lots.

5.14. Cancellation of Solicitations

- 5.14.1. The university may cancel, in whole or in part, any or all solicitations, when the cancellation is in the best interest of the university as determined by the university.
- 5.14.2. Notice of cancellation. If a solicitation is canceled before closing, the university will post notice of the cancellation to the university's sourcing website. If a solicitation is cancelled after closing, the university will send notice of cancellation to all offerors.

5.15. Disposition of Solicitation Responses if Solicitation Cancelled

- 5.15.1. Prior to closing. When a solicitation is cancelled prior to closing, all solicitation responses received will be destroyed.
- 5.15.2. After closing. When a solicitation is cancelled after closing, all solicitation responses received will be retained and become part of the university's archive records.

5.16. Rejection of Solicitation Response or Offeror

- 5.16.1. The university may reject, in whole or in part, any solicitation response or offeror not in compliance with the solicitation document, or for any of the reasons listed in Sec. 5.16.2 or 5.16.3, or upon a written finding that it is in the best interest of the university as determined by the university.
- 5.16.2. Reasons for rejection. The university may reject a solicitation response upon the university's determination that include, but are not limited to, the solicitation response:
- a. Is contingent upon the university's acceptance of terms and conditions (including specifications) that differ from the solicitation document;

- b. Takes exception to the terms and conditions (including specifications) set forth in the solicitation document;
 - c. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the solicitation document or in contravention of applicable law;
 - d. Offers goods or services that fail to meet the specifications of the solicitation document;
 - e. Is late;
 - f. Is not in substantial compliance with the solicitation document;
 - g. Is not in substantial compliance with all prescribed solicitation procedures; or,
 - h. Does not include security required by the solicitation document.
- 5.16.3. The university may reject an offeror upon the university's findings that include, but are not limited to, the offeror:
- a. Has not met required mandatory prequalification;
 - b. Has been excluded, debarred or disqualified by the federal government, the state of Oregon, or another public agency;
 - c. Has not met the requirements of the Business Inclusion and Diversity Program, if required in the solicitation document;
 - d. Has been declared ineligible by the Commissioner of Bureau of Labor and Industries under Oregon Revised Statute 279C.860;
 - e. Has within the last five years been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;
 - f. Has a primary employee that has been convicted of a criminal offense as a result of obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;
 - g. Has a primary employee that has committed a violation of a contract provision so serious as to justify rejection. A violation may include, but is not limited to, a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of a contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the offeror may not be considered to be a basis for rejection;

- h. Does not carry workers' compensation or unemployment insurance as required by statute; or,
 - i. Is non-responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a contract. In determining whether an offeror is responsible the university may consider:
 - i. If the offeror has appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the offeror to meet all contractual responsibilities;
 - ii. If the offeror has a satisfactory record of contract performance. The university may consider both private and public contracts in determining responsible performance under a contract;
 - iii. If the offeror has a satisfactory record of integrity. An offeror may lack integrity if the university determines the offeror demonstrates a lack of business ethics such as: violation of state environmental laws, false certifications made to a state agency, destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that seriously, and directly affects their responsibility. The university may find an offeror non-responsible based on the lack of integrity of any person having influence or control over the offeror (such as a key employee of the offeror that has the authority to significantly influence the offeror's performance of the contract or a parent company, predecessor or successor);
 - iv. If the offeror is qualified legally to contract with the university; or,
 - v. If the offeror has supplied all necessary information in connection with the inquiry concerning responsibility. If the offeror fails to promptly supply information requested by the university concerning responsibility, the university may base the determination of responsibility upon any available information or may find the offeror non-responsible.
- 5.16.4. Investigation of offerors. The university may investigate any offeror submitting a solicitation response related to a determination of responsibility. The investigation may include the offeror's officers, directors, owners, affiliates, any other person acquiring ownership of the offeror or other parties outside the offeror.
- 5.16.5. Right to Inspect Plant. The university may, at reasonable times, inspect the plant or place of business of an offeror or any proposed subcontractor related to a determination of responsibility.

5.16.6. Notice of rejection. If an offeror or a solicitation response is rejected in accordance with this standard, the university will provide written notice of such rejection to the offeror. The notice will include the grounds for rejection and a statement of the offeror's appeal rights.

5.17. Disposition of Solicitation Responses if Rejected

5.17.1. When any or all solicitation responses are rejected, the solicitation responses will be retained and become part of the university's archive records.

5.18. Negotiations

5.18.1. Invitation to bid negotiations.

- a. The university may negotiate with the lowest-cost responsive, responsible bidder when the lowest cost exceeds the available budget and reducing the scope of work is necessary.

5.18.2. Request for proposal negotiations - General.

- a. The university may, if it has given notice in the request for proposal, commence negotiations with all proposers submitting responsive proposals or all proposers in the competitive threshold. "Competitive threshold" means the highest-ranked proposals based on evaluating all responsive proposals in accordance with the evaluation criteria set forth in the request for proposal.
- b. The university may negotiate:
 - i. The statement of work;
 - ii. The contract price as it is affected by negotiating the statement of work; and,
 - iii. Any other terms and conditions reasonably related to those expressly authorized for negotiation in the solicitation document. Accordingly, proposers will not submit and the university will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the solicitation document.

5.18.3. Request for proposal negotiations - Best and final offers.

- a. If the university chooses to enter into discussions with and receive best and final offers, the university will proceed as follows:
 - i. The university will initiate oral or written discussions with all proposers submitting responsive proposals or all proposers in the competitive threshold

regarding the provisions of the request for proposal that the university identified as the subject of discussions.

- ii. The university may conduct discussions with proposers, but need not conduct the same amount of discussions with each proposer. The university may terminate discussions with proposers at any time.
- iii. The university will re-evaluate and adjust the evaluation score of a proposal as a result of discussions and best and final offers received under this section. The statement of work, contract price, or other terms and conditions authorized for negotiation in the request for proposal may be altered or otherwise changed during the course of the discussions.
- iv. The university will establish a common date and time by which proposers must submit best and final offers. Best and final offers will be submitted only once, provided, however, that the university may make a written determination that it is in the university's best interest to conduct additional discussions or negotiations, or change the university's requirements and require another submission of best and final offers.

5.19. Additional Requirements

- 5.19.1. If the funding source for any procurement has additional or more stringent requirements than those set forth in this standard, the university will comply with the requirements set forth by the funding source, provided those requirements are otherwise lawful.

5.20. Appeals of university solicitation process and award decisions and actions.

- 5.20.1. Applicable appeal provisions for this university standard are set forth in 03-010 *Procurement Thresholds and Methods* Section 5.17.

6. Forms & Tools

- 6.1. None.

7. Frequently Asked Questions

- 7.1. None.

8. Related Information

- 8.1. University Standard 03-010 *Procurement Thresholds and Methods*:
http://policy.oregonstate.edu/UPSM/03-010_procurement_thresholds_methods

9. History

- 9.1. Adopted by OSU: July 1, 2014 from OAR 580-061, 580-062 and 580-063.
- 9.2. Revised: University Standards 580-061, 580-062 and 580-063 were consolidated and renumbered as University Standards 03-010 and 03-015 on January 2, 2019.
- 9.3. Revised: Housekeeping, September 2019.
- 9.4. Reviewed and revised: January 24, 2023.
- 9.5. Revised: Housekeeping, September 6, 2023.
- 9.6. Next scheduled review date: January 2028.

10. Website

- 10.1 University Standard 03-015 *Procurement Solicitations and Contracts*: http://policy.oregonstate.edu/UPSM/03-015_procurement_solicitations_contracts.

11. Contacts

Department	Phone Number	Website
Procurement and Contract Services	541-737-4261	http://pacs.oregonstate.edu/pacs