



Home Forward Public Contracting Rules

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1. SCOPE

1.1 Statutory Authority.

These Rules are adopted by Home Forward and its contract review board, the Home Forward Board of Directors (the “Board”) pursuant to the authority granted by ORS Chapter 456, ORS 279A.065 and ORS 279A.070.

1.2 Attorney General’s Rules Inapplicable.

The Attorney General’s Model Contract Rules adopted pursuant to ORS 279A.065 are generally inapplicable to the contracting activities of the Board unless specifically referenced and adopted in these Rules, but may be used by the Purchasing Agent, as hereinafter defined, as supplemental rules, if needed to address circumstances not provided for by these Rules.

1.3 Statutory Requirements Not Reiterated.

Home Forward is subject to public contracting requirements under ORS Chapters 279A, 279B and 279C (the “Public Contracting Code”). Those requirements generally are not reiterated in these Rules.

1.4 Federal Requirements.

Home Forward is subject to certain contracting requirements when a particular contract is supported in whole or in part with federal funds. Those requirements are not reiterated in these Rules. Conflicts between these Rules and a federal requirement imposed by a federal statute, regulation, rule, circular or grant agreement shall be resolved in favor of the federal requirement.

1.5 Exempt Contracts.

The following contracts are exempt from application of the Public Contracting Code and are also exempt from all provisions of these Rules except for Section 1.6 concerning the authority of the Board and the Purchasing Agent to award and execute Home Forward contracts:

1.5.1 Contracts between Home Forward and other public bodies or between Home Forward and the federal government;

1.5.2 Grants, as defined herein, other than contracts for construction services for which Home Forward has received a grant;

1.5.3 Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which Home Forward is or may become interested;

1.5.4 Acquisitions or disposals of real property or interests in real property;

1.5.5 Contracts, agreements or other documents entered into, issued or established in connection with:

1.5.5.1 The incurring of debt by Home Forward, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited.

1.5.5.2 The making of program loans and similar extensions or advances of funds, aid or assistance by Home Forward to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or

1.5.5.3 The investment of funds by Home Forward, as authorized by law, and other financial transactions of Home Forward that in the determination of the Purchasing Agent or the Executive Director cannot practically be established under the competitive Contractor selection procedures of ORS 279B.050 to 279B.085;

1.5.6 Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565; or

1.5.7 Any other public contracting of Home Forward specifically exempted from the Public Contracting Code by another provision of law.

1.6 Powers and Authority of the Board and the Purchasing Agent.

1.6.1 Powers Reserved to the Board.

1.6.1.1 **Contract Review Board Authority.** The Board reserves to itself the exercise of all of the duties and authority of a contract review board under the Public Contracting Code, including, but not limited to, the power and authority to:

(a) Hear Debarment and pre-qualification appeals; and

(b) Create and approve special procurements under ORS 279B.085 and approve exemptions from competitive bidding for Public Improvement Contracts under ORS 279C.335.

1.6.1.2 **Contract Award.** The Board reserves to itself the authority to approve the award of all Public Contracts for which the Contract Price exceeds the expenditure authority of the Purchasing Agent.

1.6.1.3 **Amendment of Rules.** All amendments to these Rules shall be made by resolution of the Board following a hearing at which members of the public have the opportunity to appear and submit comments and protests. Unless otherwise provided in these Rules, notice of the hearing for a proposed amendment to these Rules shall be advertised at least once in a publication in

general circulation in the Portland metropolitan area at least five (5) Days prior to the hearing.

1.6.2 Authority and Responsibilities of the Purchasing Agent.

1.6.2.1 **General Authority.** The Purchasing Agent is authorized to take all action that s/he deems necessary or convenient to implement these Rules except for those powers and authorities expressly reserved to the Board. Without limiting the generality of the foregoing and subject to these Rules, the Purchasing Agent shall determine the manner in which Contractors for particular Contracts shall be selected, issue all Solicitation Documents, hear all protests, evaluate all awards, make all contract awards within his/her expenditure authority and execute, on behalf of Home Forward, all duly awarded Contracts.

1.6.2.2 **Expenditure Authority.** The Purchasing Agent has the authority to enter into Contracts and Contract Amendments if the total amount of the Contract or Contract Amendment is less than \$100,000. Except as provided in the preceding sentence, the Board must approve all of Home Forward's Contracts.

1.6.2.3 **Purchasing Agent Regulations.** The Purchasing Agent may develop Contract and Solicitation forms and promulgate administrative rules, procedures and delegation orders under these Rules. The Purchasing Agent shall establish practices and procedures that:

- (a) Do not encourage favoritism or substantially diminish competition;
- (b) Allow Home Forward to take advantage of the cost-saving benefit of alternative contracting methods and practices;
- (c) Give preference to Goods and Services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal (and so long as giving such preference is consistent with applicable federal laws); and
- (d) Give preference to Goods that are certified to be made from recycled products when such Goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of Goods made from recycled products is not significantly more than the cost of Goods made from non-recycled products.

1.6.2.4 **Contract Oversight.** The Purchasing Agent shall oversee all public contracting activities of Home Forward. All Contracts and Contract Amendments will be reported on a monthly basis on the Board contract report.

1.6.2.5 **Mandatory Review and Rule Amendment.** The Purchasing Agent will designate appropriate staff to review and recommend necessary changes to the Rules following each session of the Oregon state legislature and

may, from time to time, recommend other amendments to the Rules. All amendments to the Rules will be promulgated by the Board.

1.6.2.6 **Delegation.** All responsibilities and authority of the Purchasing Agent except for those duties specifically assigned by these Rules to the Executive Director of Home Forward may be delegated and sub-delegated by duly executed written orders.

1.7 Effective Date and Effect.

These Rules take effect upon adoption by the Board and supersede any conflicting rules, procedures or practices, including but not limited to Home Forward Contract Review Board Rules, dated December 10, 2002, and the Housing Authority Contracting Rules, which are also dated December 10, 2002.

2. DEFINITIONS

“Addendum” or “Addenda” means a written document issued by Home Forward to change, clarify, add, modify or delete a Solicitation Document.

“Affected Entity” or “Affected Offeror” means an Entity whose ability to participate in a Goods and Services procurement under ORS 279B is adversely affected by a Home Forward decision. See ORS 279B.410.

“Alternative Contracting Methods” means a method of constructing a public improvement, for which price is not the only relevant criterion in the selection of an otherwise qualified general contractor, including, but not limited to the Design/Build method and the CM/GC method of a Public Improvement Contract.

“Amendment” means a written document to modify or change a Contract and executed by all parties to the Contract.

“Bid” means a formal, sealed, binding written Offer submitted directly to Home Forward to provide Goods or Services or to construct an improvement described in a Solicitation Document for a fixed price, based on stipulated lump sums and/or unit prices.

“Bid Documents” means the Solicitation Documents that set forth requirements for submitting a Bid.

“Bidder” means an Entity that submits a Bid directly to Home Forward in response to an Invitation to Bid.

“Board” means the Board of Directors of Home Forward.

“Change Order” means a written statement signed by Home Forward and a general contractor, stating their agreement upon all or part of the following, subject to particular terms and conditions of an agreement between a general contractor and Home Forward for a particular project: (a) a described change in the work being undertaken by the general contractor; (b) the

amount, if any, the original Contract amount is adjusted upward or downward for the change in the work; and (c) the extent of the adjustment, if any, in the schedule of construction.

“Closing” means the date and time after which Bids, Proposals, Statements of Qualifications or other Solicitation Responses will not be received. The Closing date and time must be specified in the Solicitation Documents.

“Construction Manager/General Contractor (CM/GC) Method” means a method of construction in which the general contractor, among other things, undertakes design phase involvement and constructability reviews, performs value engineering, schedules estimating and subcontracting services, establishes a guaranteed maximum price to complete the Contract work, acts as general contractor, coordinates and manages the building process, provides general contractor expertise and acts as a member of the project team, along with Home Forward, an architect, engineer and other consultants.

“Contract” means a written agreement that sets forth all rights and obligations of the parties with respect to a particular transaction, including but not limited to all plans, specifications, price terms and legal requirements.

“Contract Price” means the total amount paid or to be paid under a Contract, including any approved alternates, and any fully executed Change Orders or Amendments.

“Contractor” means the Entity awarded a Contract by Home Forward.

“Consultant” means the Entity awarded a personal services Contract by Home Forward.

“Days” means calendar days unless otherwise specified by these Rules.

“Debarment” means a debarment pursuant to ORS 279B.130 or a disqualification pursuant to ORS 279C.440, 279C.445 and 279C.450.

“Design-Build Contract” means a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with Home Forward, and manages both design and construction. In this form of Contract, a single entity provides Home Forward with all of the Services necessary both to design and construct the public improvement project.

“Disaster” means a severe storm, volcanic eruption, landslide, mudslide, drought, fire, earthquake, explosion, civil disturbance, or other catastrophe that causes or may cause substantial damage or injury to persons or property within Home Forward’s boundaries or area of jurisdiction.

“Disqualification” means the elimination of a Bid or Proposal from consideration for a particular award on grounds of responsiveness or under the Standards of Responsibility.

“Emergency” means that a substantial risk of loss, damage, interruption of services, or substantial threat to property, public health, welfare or safety has arisen from circumstances that

could not have been reasonably foreseen and that require prompt execution of a Contract to remedy the condition.

“Energy Savings Performance Contract”, or “ESPC”, means a Public Contract between Home Forward and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a Design/Build Contract, that guarantees energy savings or performance.

“Entity” means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

“Findings” means justification for the Board or Executive Director’s conclusion that may include, but is not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; value engineering; specialized expertise needed; public safety; market conditions; technical complexity; and funding sources.

“Goods” means any item or combination of supplies, equipment materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.

“Invitation to Bid” means a publicly advertised written Solicitation Document calling for Bids.

“Offer” means a Bid, Proposal, or Quotation, as applicable, submitted directly to Home Forward.

“Offeror” means an Entity submitting an Offer directly to Home Forward.

“Opening” means the date upon which Solicitation Documents are first available to potential Offerors.

“Personal Service Contract” means a Contract primarily for the provision of services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge or the exercise of discretionary judgment skills and for which the quality of the service depends on attributes that are unique to the service provider. Such services include but are not limited to the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. For any single Contract or class of Contracts, the Purchasing Agent shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph are Personal Services.

The following Contracts are not Personal Service Contracts:

1. Contracts with a temporary staffing agency to supply labor, which is of a type that can generally be done by any skilled worker;

2. Contracts, even though in a professional capacity, if primarily for equipment, supplies or materials; or
3. Contracts for which the work has traditionally been performed by Contractors selected primarily on the basis of price (i.e., construction Services; food services; or other Services that do not require specialized skills, knowledge and resources).

“Price Agreement” means a Public Contract for the procurement of Goods or Services at a set price with no guarantee of a minimum or maximum purchase; or an initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services in which the contracting agency does not guarantee a minimum or maximum additional purchase.

“Proposal” means a competitive written Offer, binding on the Proposer and submitted directly to Home Forward in response to a Request for Proposals, a Request for Qualifications or a Request for Quotations.

“Proposer” means an Entity that submits a Proposal directly to Home Forward in response to a Request for Proposals, a Request for Qualifications or a Request for Quotations.

“Public Contract” means any agreement for the purchase, lease, rental or other acquisition or the sale or other disposal by Home Forward of personal property, Services, including personal services, public improvements, Public Works, minor alterations or ordinary repair or maintenance necessary to preserve a public improvement and which is not exempt from the application of these Rules under Section 1.

“Public Contracting Code” means the provisions of ORS Chapters 279A, 279B, and 279C.

“Public Improvement Contract” means a Contract for the construction, reconstruction or major renovation on real property by or for Home Forward, but does not include a Contract for which no funds of Home Forward are directly or indirectly used, emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement.

“Public Works” include, but are not limited to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by Home Forward to serve the public interest but does not include the reconstruction or renovation of privately owned property which is leased by Home Forward.

“Purchasing Agent” means the Executive Director of Home Forward, or his or her duly authorized designees.

“Qualified Pools” means a pool of Contractors qualified to provide certain types of Goods or public improvements or to perform certain types of Services, including Personal Services and construction Services.

“Quotation” or “Quote” means a price or statement of proposed Contract terms offered directly to Home Forward in response to an informal, oral or written Solicitation that is not publicly advertised, but is made to a limited number of potential Offerors, including but not limited to members of a Qualified Pool.

“Request for Proposal” means publicly advertised written Solicitation Documents inviting Proposals.

“Request for Qualifications” means a written request for submission of a statement of qualifications.

“Request for Quotations” means an informal oral or written request inviting Quotes.

“Resident Bidder” means a Bidder that has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the Bid, has a business address in Oregon, and has stated in the Bid whether the Bidder is a Resident Bidder under ORS 279A.120.

“Responsible Bidder” or “Responsible Proposer” means that a Bidder or a Proposer who has made a Responsive Offer, meets the Standards of Responsibility and, if the Contract is for a Public Improvement, is not on the list created by the Construction Contractors Board under ORS 701.227.

“Responsive Offer” means an Offer (including a Bid or Quote or Proposal) that conforms in all material respects with the requirements set forth in the Solicitation Documents and all requirements of the Public Contracting Code and these Rules. An Offer is not responsive if it contains Contract terms or provisions that are contrary to the terms and provisions set forth in the Solicitation Documents or indicates that the Goods and Services that will be provided do not conform to the Contractor specifications.

“Rules” means these Public Contracting Rules of Home Forward promulgated by the Board.

“Sealed” means that a bid is enclosed in an opaque paper envelope with all openings glued, taped, or otherwise fastened so the envelope cannot be easily opened prematurely without leaving evidence that it had been opened prematurely.

“Services” means all labor and services other than Personal Services (including construction and trade services).

“Solicitation” means any invitation to one or more potential Contractors to submit a Bid, Proposal, Quote, statement of qualifications or letter of interest to Home Forward with respect to a proposed project, procurement or other contracting opportunity. The word “Solicitation” also refers to the process by which Home Forward requests, receives and evaluates potential Contractors and awards Contracts that are subject to these Rules.

“Solicitation Documents” means all informational materials issued by Home Forward for a Solicitation, including, but not limited to advertisements, Instructions to Bidders or Proposers,

the Contract terms, Invitations to Bid, Requests for Proposals, written Requests for Quotations and all documents incorporated by reference.

“Standards of Responsibility” means that an Offeror must meet all of the following requirements to be deemed a responsible Offeror:

1. Financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to indicate the capability of the Bidder or Proposer to meet all contractual responsibilities;
2. A satisfactory record of performance. The Purchasing Agent shall document the record of performance of a Bidder or Proposer if the Purchasing Agent finds the Bidder or Proposer nonresponsible under this paragraph;
3. A satisfactory record of integrity. The Purchasing Agent shall document the record of integrity of a Bidder or Proposer if the Purchasing Agent finds the Bidder or Proposer nonresponsible under this paragraph;
4. Qualified legally to contract with Home Forward;
5. Supplied all necessary information in connection with the inquiry concerning responsibility. If a Bidder or Proposer fails to promptly supply information requested by the Purchasing Agent concerning responsibility, the Purchasing Agent shall base the determination of responsibility upon any available information and may find the Bidder or Proposer to be nonresponsible;
6. Not been Debarred by Home Forward; and
7. Has complied with requirements under the Solicitation, if any, to make good faith efforts as prescribed in ORS 200.045(3) concerning small business enterprises.

The Purchasing Agent may investigate any Offeror so that previously Debarred Entities or their officers, directors, or principal owners may not, by subterfuge, change of ownership, or other adjustments in formal appearance, avoid application of this Rule or of the Debarment provision of these Rules.

“Technical Proposal” means a written Proposal, submitted directly to Home Forward in response to a request for technical proposals issued by Home Forward, describing the Proposer’s qualifications and the specific Goods the Proposer would offer or the specific methodology the Proposer would use to provide the Goods and/or Services needed by Home Forward.

“Work Order” means the document that authorizes a purchase from a Goods, Services or Price Contract.

3. CLASSES OF PUBLIC CONTRACTS AND METHODS OF SELECTION

3.1 General Rules.

3.1.1 **No Division of Contracts.** No procurement or Contract or scheduled public improvement may be artificially divided into parts or phases for the purpose of avoiding any of these Rules.

3.1.2 **Record of Selection Method.** The Purchasing Agent shall keep a written record of the method used to award every Contract for Personal Services, Goods or Services or public improvements and the basis of the award and, unless the award was made pursuant to an Invitation to Bid or a Request for Proposals, of the reasons why the method of selection was deemed in the best interest of Home Forward

3.1.3 **Estimated Contract Price.** When deciding whether to use an informal method of selection that does not include formal advertisement of the Solicitation, the estimated Contract Price shall be calculated to include a reasonable contingency against market price fluctuation. If Quotes or Proposals received under an informal Solicitation indicate that the likely Contract Price, including all renewal periods, will exceed the price-limit for the informal method by more than ten percent (10%), the Solicitation shall be cancelled and may be reissued under a method appropriate for the likely Contract Price.

3.2 Sole Source Contracts.

3.2.1 **Method of Selection and Record of Determination.** Goods, Services and Personal Services that are available from only one source may be purchased through direct negotiation without competitive Solicitation. The Purchasing Agent shall make a written record of the facts that support the determination that the product or Service is only available from a single source and that alternative products, Services or improvements would be unsatisfactory for Home Forward's needs.

3.2.2 **Notice.** At least three (3) business days before making a sole source procurement for which the estimated Contract Price will exceed \$100,000, the Purchasing Agent shall publish notice of the procurement that: (1) identifies the Goods or Services sought, (ii) requests statements of interest from vendors who are qualified to provide the desired Goods or Services, and (iii) states that if no responses are received from qualified vendors within the time period specified in the notice, the Purchasing Agent will proceed with a sole source procurement.

3.3 Emergencies.

3.3.1 **In General.** When the Purchasing Agent determines that circumstances that could not have been reasonably foreseen create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety, which require the prompt execution of a Contract to remedy the condition, the Purchasing Agent may declare an emergency. After declaring an emergency, the Purchasing Agent may make or authorize others to make emergency procurements in accordance with ORS 279B.080.

3.3.2 **Reporting.** The Purchasing Agent shall: (i) document the nature of the emergency; the method used for selection of the particular Contractor and the reason why

the selection method was deemed in the best interest of Home Forward and the public, and (ii) notify the Board of the declaration of emergency, if made, and the facts and circumstances surrounding the emergency execution of the Contract, as soon as possible, in light of the emergency circumstances.

3.3.3 Public Improvement Contracts. A Public Improvement Contract may only be awarded under this Section if the Purchasing Agent has declared an emergency. Any Public Improvement Contract award under this Section must be awarded within sixty (60) Days following the declaration of an emergency unless the Board grants an extension of the emergency period.

3.4 Renewals. Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.

3.5 Preference for Products and Services of Disabled and Blind Individuals. If any Goods, Services or improvements needed by Home Forward are available in a timely manner from a qualified nonprofit agency for disabled individuals, as defined in ORS 279.835, or if Home Forward is in need of an operator of a vending facility on property owned by Home Forward, the Purchasing Agent shall enter into a Contract with a qualified nonprofit agency in accordance with the provisions of ORS 279.835 - ORS 279.855 or with a blind person in accordance with the provisions of ORS 346.510 - ORS 346.560, as applicable. If Goods, Services, including vending facility operations, or improvements are available from more than one such agency or person, the Purchasing Agent shall award a contract to the agency or the person with products and services that best meet the needs of Home Forward. The provisions of this paragraph do not apply to Contracts for Personal Services.

4. GOODS AND SERVICES OTHER THAN PERSONAL SERVICES

4.1 General. The Rules set forth under this section 4 govern the selection of Goods and Services providers, including providers of trade and construction services for minor alterations, ordinary repairs or maintenance of public improvements. Section 8 of these Rules governs selection of Contractors for public improvements. Contracts for Goods or Services in any amount may be awarded under a Solicitation using an Invitation to Bid or a Request for Proposals.

4.2 Small Procurements. Contracts for the procurement of Goods or Services for which the estimated Contract Price does not exceed \$5,000 may be awarded by direct appointment or any other method which the Purchasing Agent deems in the best interest of Home Forward. A Contract awarded as a small procurement may be amended only in accordance with these Rules.

4.3 Intermediate Procurements. Contracts for Goods or Services for which the estimated Contract Price does not exceed \$100,000 may be awarded using one of the following two informal Solicitation methods or by selection from a Qualified Pool. For Contracts for which the estimated Contract Price is more than \$5,000 but does not exceed \$20,000, at least three (3) verbal Quotes must be obtained. For Contracts for which the estimated Contract Price

is more than \$20,000 but does not exceed \$100,000, at least three (3) written quotes must be obtained. A Contract awarded as an intermediate procurement may be amended only in accordance with these Rules.

4.4 Special Procurements. The following classes of Contracts or Goods or Services are subject to the class special procurement procedures described below.

4.4.1 Purchasing Agent's Discretion. The following classes of contracts may be awarded by direct appointment or any other method which the Purchasing Agent deems in the best interest of Home Forward. The Purchasing Agent shall make a written record documenting the manner of selection and the reason why the selection was in the best interest of Home Forward.

4.4.1.1 Insurance Contracts.

4.4.1.2 Contracts for copyrighted materials or advertising products;

4.4.1.3 Contracts for the purchase of steam, power, heat, water, telecommunications services, and other utilities;

4.4.1.4 Contracts for the purchase of price-regulated items;

4.4.1.5 Contracts for a single period of one year or less, for the temporary extension of an expiring and non-renewable Price Agreement or Service Contract;

4.4.1.6 Contracts for food service;

4.4.1.7 Contracts for equipment repair and overhaul;

4.4.1.8 Contracts for gasoline, fuels, oils and lubricants;

4.4.1.9 Contracts for high volume copiers;

4.4.1.10 Contracts for purchases of technology, including but not limited to computers, servers, personal digital assistants, telephones, software, security systems, printers, copiers and related and ancillary types of hardware and software;

4.4.1.11 Contracts related to the acquisition or disposal of real property and financing of the same, including but not limited to Contracts with lenders, real estate agents and brokers, title insurance companies, escrow agents, and appraisers; and

4.4.1.12 Contracts for works of art; including but not limited to Contracts with artists such as a photographer, filmmaker, painter, weaver or sculptor.

4.4.2 **Federal Purchasing Program.** Goods and Services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration (“GSA”) as provided in this Rule.

4.4.2.1 The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or Contracts submitted to and approved by the Purchasing Agent. The requisitioning department shall provide the Purchasing Agent with a copy of the letter, memorandum or other documentation from GSA establishing permission to Home Forward to purchase under the federal program.

4.4.2.2 The price of the Goods or Services must be established under price agreements between the federally approved vendor and GSA.

4.4.2.3 The price of the Goods or Services must be less than the price at which such Goods or Services are available under state or City of Portland cooperative purchasing programs that are available to Home Forward.

4.4.2.4 If a single purchase of Goods or Services exceeds the Informal Contract Limit, the requisitioning department must obtain informal written Quotes or Proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for Home Forward.

4.4.2.5 Subsection 4.4.2.4, above, does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

4.4.3 **Cooperative Procurements.** The Purchasing Agent may purchase Goods and Services under joint and permissive cooperative procurements as provided under and subject to the applicable provisions of ORS Chapter 279A. When procuring Goods or Services using advertised Invitations to Bid or a Request for Proposals, the Purchasing Agent is encouraged to consider whether the Solicitation should provide a basis for permissive cooperative procurements by other contracting agencies.

5. PERSONAL SERVICE CONTRACTS

5.1 General Rule. Contracts for personal services in any amount may be awarded under a Request for Proposals. Personal services are services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge or the exercise of discretionary judgment skills and for which the quality of the service depends on attributes that are unique to the service provider. Such services include but are not limited to the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. For any single Contract or class of Contracts, the Purchasing Agent shall have discretion to determine whether additional types of services not specifically mentioned in this section are personal services.

5.2 Intermediate Level Contracts. Contracts for the procurement of personal services for which the estimated Contract Price does not exceed \$100,000 may be awarded using one of the following two informal Solicitation methods. For Contracts for which the estimated Contract Price is more than \$5,000 but does not exceed \$20,000, at least three (3) verbal Quotes must be obtained. For Contracts for which the estimated Contract Price is more than \$20,000 but does not exceed \$100,000, at least three (3) written quotes must be obtained. A Contract awarded as an intermediate procurement may be amended only in accordance with these Rules.

5.3 Small Procurements; Purchasing Agent's Discretion. The following Personal Service Contracts may be awarded by any method deemed appropriate by the Purchasing Agent, including without limitation, by direct appointment, by private negotiation, by lottery from a Qualified Pool, or using a competitive process.

5.3.1 Contracts Under \$5,000. Contracts for which the Purchasing Agent estimates that payments will not exceed \$5,000 over the full term, including optional renewals.

5.3.2 Contracts Using Qualified Pools. Contracts of not more than \$100,000, when selection is made from a Qualified Pool maintained under Section 13.

5.3.3 Temporary Extensions. A Contract for a single period of one year or less, for the temporary extension of an expiring and non-renewable contract.

5.3.4 Contracts for Continuation of Work. Contracts of not more than \$100,000 for the continuation of work by a Contractor who performed preliminary studies, analysis or planning for the work under a prior Contract, if the prior Contract was awarded under a competitive process and the Purchasing Agent determines that use of the original Contractor will significantly reduce the costs of, or risks associated with, the work.

5.3.5 Reinstatement of Expired Contracts. A Personal Services Contract may be reinstated once, at least so long as the requirements of this Section are met.

5.3.5.1 The Contract was not extended or renewed in a timely manner due to unforeseen or unavoidable conditions.

5.3.5.2 The Contract is reinstated within sixty (60) Days of expiration of the original Contract.

5.3.5.3 The Purchasing Agent has determined that the work needs to be completed by the original Contractor after expiration of the Contract and there is no change in the statement of work and either:

(a) The reinstatement is exclusively for the purpose of permitting completion of the work or the services for no additional compensation; or

(b) When the services are of a continuing or repetitive nature which are compensated at an hourly, daily or similar periodic rate, the reinstatement either does not increase the rate of compensation or does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area CPI (all items) published immediately prior to the date the original Contract was established with the same index published immediately prior to the date of the reinstatement and extension.

5.3.5.4 There have been no prior reinstatements;

5.3.5.5 The original Contract will not be modified except with respect to the time for performance; and

5.3.5.6 The reinstatement does not raise the aggregate amount of compensation beyond \$100,000.

5.3.6 **Arts and Entertainment.** Contracts in any amounts for any theatrical or musical performance or for the production of a work of art, music or literature.

5.3.7 **Advertising.** Contracts in any amounts for advertising services.

5.3.8 **Cooperative Procurements.** Contracts under joint and permissive cooperative procurements as provided under and as subject to the applicable provisions of ORS Chapter 279A.

6. ENERGY SAVING PERFORMANCE CONTRACTS

6.1 Energy Saving Performance Contracts. For ESPC Proposal evaluations, the Purchasing Agent may provide in the Request for Proposals that qualifications-based evaluation factors will outweigh Home Forward's consideration of price-related factors, due to the fact that prices for the major components of the work to be performed during the ESPC process contemplated by the Request for Proposals will likely not be determinable at the time of proposal evaluation. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible, such evaluation factors shall recognize that public policy requires that Public Improvements be constructed at the least overall cost to Home Forward.

6.2 Evaluation Criteria. In ESPC contracting, in addition to the factors set forth in subsection 6.1, special evaluation factors may also include sample technical energy audits from similar projects, sample measurement and verification ("M & V") reports, financial statements and related information of the energy service company ("ESCO") for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee contract levels, the specific person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team

members and consultants to be assigned to the project, the ESCO's experience in the energy savings performance contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of energy conservation measures, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the contracting Agency and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the technical energy audit phase of the work and the ESCO's fee structure for all phases of the ESPC.

6.3 Contract Negotiations. Energy savings Contract terms may be negotiated to the extent allowed by the Request for Proposals, provided that the general work scope remains the same so that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Documents. In ESPC contracting, it can be anticipated that negotiated terms may also include the scope of preliminary design to be evaluated by the parties during the technical energy audit phase of the work, the scope of services to be performed by the ESCO during the project development plan phase of the work, the detailed provisions of the energy savings guarantee to be provided by the ESCO and scope of work, methodologies and compensation terms and conditions during the design and construction and M & V phase of the work.

7. ALTERNATIVE CONSTRUCTION METHODS

7.1 General Policy. The purpose of this section is to provide guidance concerning the special considerations that may constitute evaluation criteria for special projects and construction methods. In basic negotiated construction contracting, where the only reason for a Request for Proposals is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

7.2 Construction Manager/General Contractor Evaluation Factors. Evaluation factors for CM/GC Proposals may include but are not limited to firm and personnel experience on projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service and related matters which affect cost or quality; the ability to respond to the technical complexity or unique character of the project, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters which affect cost or quality.

7.3 Design/Build Evaluation Factors. Evaluation factors for Design/Build Proposals include but are not limited to: the CM/GC factors listed in subsection 7.2 above as well as design professional qualifications, specialized experience, preliminary design submittals, technical merit, design/builder team experience and related matters which affect cost or quality.

7.4 Contract Negotiations. Alternate construction Contract terms may be negotiated to the extent allowed by the Request for Proposals, provided that the general work scope remains the same so that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Documents.

8. PUBLIC IMPROVEMENT CONTRACTS

8.1 Policy to Construct Public Improvements at the Least Cost. For Public Improvement Contracts, it is the policy of the State of Oregon that public agencies shall make every effort to construct public improvements at the least cost to the public agency. However, the true cost of a public improvement may be affected by factors that are not best served by traditional competitive bidding.

8.2 Use of Invitations to Bid. Except as otherwise required by these Rules, Contracts for Public Improvements in any amount may be awarded under the competitive sealed bidding procedures described in these Rules.

8.3 Other Methods of Award. The following Contracts are exempt from the general requirement of award pursuant to an advertised Invitation to Bid.

8.3.1 Small Public Improvements. Public Improvement Contracts for which the estimated Contract Price does not exceed \$5,000 may be awarded by direct appointment or any other method which the Purchasing Agent deems in the best interest of Home Forward. A Contract awarded as small public improvement may be amended only in accordance with these Rules.

8.3.2 Intermediate Public Improvements. Public Improvement Contracts for which the estimated Contract Price does not exceed \$100,000 may be awarded using one of the following two informal Solicitation methods or by selection from a Qualified Pool. For Public Improvement Contracts for which the estimated Contract Price is more than \$5,000 but does not exceed \$20,000, at least three (3) verbal Quotes must be obtained. For Contracts for which the estimated Contract Price is more than \$20,000 but does not exceed \$100,000, at least three (3) written Quotes must be obtained. A Contract awarded as an intermediate procurement may be amended only in accordance with these Rules.

8.4 Award of Design-Build and Construction Manager/General Contractor Contracts. Contracts for the construction of public improvements using a Design-Build or CM/GC construction method shall be awarded under the Request for Proposals process described in these Rules. The determination to construct a project using a Design-Build or CM/GC method must be approved by the Board, upon application of the Purchasing Agent, in which the Purchasing Agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or

other benefits to Home Forward or the public. A Request for Proposals may be issued prior to the Board's approval of the proposed Design-Build or CM/GC method, but notice of award may not be issued until seven (7) Days following the date of the Board's approval.

8.5 Evaluation of Project Not Contracted by Competitive Bidding. As required under state law and based upon these Rules, the Purchasing Agent shall prepare and deliver to the Board a formal post-project evaluation of public improvements projects in excess of \$100,000 for which a competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in Home Forward's best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Board and made available for public inspection within thirty (30) Days of the date Home Forward issues notice of final acceptance of the project. The evaluation must include:

8.5.1 Financial information, consisting of cost estimates, any guaranteed maximum price, the number and amount of changes and change orders and actual costs;

8.5.2 A narrative description of successes and failures during design, engineering and construction; and

8.5.3 An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

9. EXEMPTIONS FROM THE COMPETITIVE BIDDING REQUIREMENT. The Board, upon its own initiative or upon request of the Purchasing Agent, may create special selection, evaluation and award procedures for, or may exempt from competition the award of, a specific contract or class of contracts as provided in this section.

9.1 Basis for Approval of Exemption. The Board may exempt a Public Improvement Contract or a class of Public Improvement Contracts from the competitive bidding requirement of ORS 279C.335(1) upon approval of Findings that include the following:

9.1.1 The nature of the Contract or class of Contracts for which the exemption is required.

9.1.2 Estimated Contract Price or cost of the project, if relevant;

9.1.3 That it is unlikely that the exemption will encourage favoritism in the awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts.

9.1.4 That awarding of Public Improvement Contract(s) under the exemption will likely result in substantial cost savings to Home Forward. As an alternative to the finding described in this subsection, when Home Forward seeks an exemption that would allow the use of an alternate contracting method that Home Forward has not previously used, Home Forward may make a finding that identifies the project as a pilot project for which Home Forward intends to determine whether the use of the alternate contracting method actually results in substantial cost savings. Home Forward shall include an

analysis and conclusion regarding actual cost savings, if any, in the evaluation required under ORS 279C.355.

9.1.5 A description of the proposed Alternative Contracting Methods to be employed, if any.

9.2 Notice of Public Hearing; Hearing.

9.2.1 Notification of the public hearing shall be published in a trade newspaper of general statewide circulation at least fourteen (14) Days prior to the hearing.

9.2.2 The notice shall state that the public hearing is for the purpose of taking comments on the draft Findings for an exemption from the competitive Bidding requirement. At the time of the notice, copies of the draft Findings shall be made available to the public.

9.2.3 At the public hearing, Home Forward shall offer an opportunity for any interested party to appear and present comments; and

9.2.4 The Board will consider the Findings and may approve the exemption after providing an opportunity for public comment.

10. SOLICITATION PROCEDURES

10.1 Advertisements.

10.1.1 **Manner of Publication.** An advertisement for a Solicitation shall be published at least once in at least one newspaper of general circulation in the Portland metropolitan area and in such publications as the Purchasing Agent may determine to be necessary or desirable to encourage competition and participation. In addition, for any Contract that will exceed \$100,000, publication must be made in The Oregonian or another trade newspaper of general statewide circulation.

10.1.2 **Time of Publication.** The last publication date of an advertisement in any publication shall be at least five (5) Days prior to any Solicitation Closing and two (2) Days prior to any pre-Bid or pre-Proposal conference.

10.1.3 **Posting and Availability.** A copy of each Notice shall be posted on Home Forward's web site and hard copy shall be made available upon request.

10.1.4 **Electronic Advertisement.** Advertisements for Solicitations may be published solely in electronic format, except that any Public Contract with an estimated Price in excess of \$100,000 shall be advertised in at least one trade newspaper of general statewide circulation.

10.1.5 **Content of Advertisement.** The advertisement shall provide the following information to prospective Offerors:

10.1.5.1 The date and time of the Closing, after which Bids, Proposals, Statements of Qualifications or other Solicitation responses will not be received. If the Solicitation is for a Public Improvement Contract with an estimated Contract Price of more than \$100,000, the Solicitation Closing must be on a Tuesday, Wednesday or Thursday between 2:00 p.m. and 5:00 p.m. unless the Solicitation is for the construction of highways, bridges or other transportation facilities;

10.1.5.2 The time, date and place that mandatory prequalification applications must be filed in accordance with these Rules and the class or classes of work for which Offerors must be prequalified, if prequalification is a requirement;

10.1.5.3 A description of the project, the character of the work to be done, the Services to be provided or the material or thing to be purchased;

10.1.5.4 Policy and program compliance to include Disparity Program requirements, if any;

10.1.5.5 The date, time and place of any conference that will be held prior to the Solicitation Closing;

10.1.5.6 The manner in which copies of the Solicitation Documents may be obtained and the address of the office where plans and specifications may be reviewed or copied;

10.1.5.7 The charge, if any, that will be made for copies of the Solicitation Documents;

10.1.5.8 The name and title of the person designated for receipt of Offers;

10.1.5.9 The address where Offers must be submitted;

10.1.5.10 The date, time and place that Offers will be publicly opened; and

10.1.5.11 A statement, if applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a).

10.2 Prequalification.

10.2.1 Decision to Prequalify. The Purchasing Agent may require prequalification of Offerors as a prerequisite to submitting a Bid or a Proposal.

10.2.1.1 If prequalification is required, such information shall be contained in the Solicitation advertisement; and

10.2.1.2 The Solicitation Documents shall provide prospective Offerors with information on the standards and process for prequalification

This Rule is intended to constitute the Rule described in ORS 279C.360 and also authorize the Purchasing Agent to require mandatory prequalification for participation in any Solicitation.

10.2.2 **Qualification Decision.** The Purchasing Agent shall issue a written decision to qualify or to deny qualification to an applicant immediately. The decision shall:

10.2.2.1 State the reasons for the action taken; and

10.2.2.2 Inform the applicant of the right to appeal the decision under these Rules.

10.3 Policy and Program Compliance.

10.3.1 **Disparity Program Compliance.** All Offers shall comply with Home Forward's Disparity Program requirements as set forth in the Solicitation Document including the City of Portland's EEO Certification.

10.3.2 **LEED's Certification, Green Buildings and Sustainability.** All Bidders and Proposers shall comply with Home Forward's LEED's, Green Buildings and Sustainability requirements as set forth in the Solicitation Documents.

10.3.3 **Recycling Program.** All Bidders and Proposers shall comply with the policy of the State of Oregon to improve environmental quality by procurement of products made through recycled materials and recycling of waste materials as set forth in ORS 279B.280.

10.4 Pre-Closing Conferences. The Purchasing Agent may hold a pre-closing conference to answer questions regarding the project, Goods or Services sought, explain procurement requirements, conduct site inspections or assist prospective Offerors in meeting Disparity Program requirements.

10.4.1 **Announcement.** The time and place of the conference shall be announced to all prospective Offerors in the Solicitation notice and Solicitation Documents. The pre-closing conference shall be held no sooner than two (2) Days after the last publication of the Solicitation advertisement, but sufficiently before Closing to allow consideration of the conference results in preparing Offers.

10.4.2 **Attendance.** The Purchasing Agent may require mandatory attendance at the pre-closing conference as a condition for submitting Offers. Such requirement shall be included in the Solicitation advertisement and in the Solicitation Documents. A list of attendees shall be documented in the Solicitation file.

10.4.3 **Confirmation by Addenda.** Statements at the pre-closing conference shall not change the Solicitation Documents unless confirmed to all prospective Offerors by means of a written Addendum to the Solicitation Documents.

10.5 Bid or Proposal Security.

10.5.1 **Security.** Bid or Proposal security not to exceed ten percent (10%) of the base bid or proposal amount(s) may be required by the Purchasing Agent for Public Contracts. The Purchasing Agent shall also have discretion to require proposal security in an amount estimated to be ten percent (10%) of the Contract Price for a solicitation under which price is negotiable. Bid or Proposal security may be in the form of a surety bond, cashier's check, certified check, or irrevocable letter of credit.

10.5.2 **Return of Security.** Upon the execution of the Contract and delivery of all required payment and performance bonds by the successful Bidder or Proposer, each Offeror's security shall be returned. The Offeror who is awarded a Contract and who, within the schedule set forth in the Solicitation Documents, fails to enter into a Contract, shall forfeit the Bid or Proposal security that accompanied the successful Offer. Any forfeit of security shall be considered as liquidated damages and not a penalty for failure of the Offeror to execute the Contract. Failure of an Offeror to negotiate in good faith for a Contract following the submission of a Bid or Proposal shall constitute grounds for retention of Bid or Proposal security, but the mere failure of a Bidder or Proposer to reach agreement with Home Forward concerning any terms and conditions of the Contract that were reserved for negotiation shall not be grounds for the retention of such security. Notwithstanding the foregoing, Bid or Proposal security shall be returned upon expiration of the period for which the Bids or Proposals are irrevocable unless an Offeror agrees in writing to extend its Offer or, in the case of the Offeror selected for award, the execution of a Contract is delayed by the Offeror.

10.6 Brand Name Products.

10.6.1 **In General.** Specifications for Contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller, except for the following reasons:

10.6.1.1 It is unlikely that such exemption will encourage favoritism in the awarding of Public Contracts or substantially diminish competition for Public Contracts;

10.6.1.2 The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to Home Forward;

10.6.1.3 There is only one manufacturer or seller of the product of the quality required; or

10.6.1.4 Efficient utilization or maintenance of existing equipment, supplies or products requires the purchase of one particular manufacturer.

10.6.2 **Brand Name or Equal.**

10.6.2.1 A brand name or equal specification may be used when the use of a brand name or equal specification is advantageous to Home Forward because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by Home Forward.

10.6.2.2 The Purchasing Agent is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.

10.6.2.3 Nothing in this subsection may be construed as prohibiting Home Forward from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the contracting agency.

10.6.3 **Qualified Product Lists.**

10.6.3.1 The Purchasing Agent may develop and maintain a qualified products list in instances in which the testing or examination of Goods before initiating a procurement is necessary or desirable in order to best satisfy the requirements of Home Forward. For purposes of this section, "Goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.

10.6.3.2 In the initial development of any qualified products list, Home Forward shall give public notice, in the same way that solicitations for procurements are issued, of the opportunity for potential Contractors, sellers or suppliers to submit Goods for testing and examination to determine their acceptability for inclusion on the list and may solicit in writing representative groups of potential Contractors, sellers or suppliers to submit Goods for the testing and examination. Any potential Contractor, seller or supplier, even though not solicited, may offer its Goods for consideration.

10.6.3.3 Home Forward's inclusion of Goods on a qualified products list shall be based on the results of tests or examinations. Notwithstanding any provision of ORS 192.410 to 192.505, Home Forward may make the test or examination results public in a manner that protects the identity of the potential Contractor, seller or supplier that offered the goods for testing or examination, including by using only numerical designations. Notwithstanding any provision of ORS 192.410 to 192.505, Home Forward may keep confidential trade secrets, test data and similar information provided by a potential Contractor, seller or supplier if so requested in writing by the potential Contractor, seller or supplier.

10.6.3.4 The inclusion of Goods on a qualified products list does not constitute and may not be construed as a prequalification under ORS 279B.120 and 279B.125 of any prospective Contractor, seller or supplier of Goods on the qualified products list.

10.7 Record of Potential Offerors. A record shall be maintained and made available to the public for review that identifies all entities that receive Solicitation Documents from Home Forward.

10.8 Reserved.

10.9 Request for Clarification or to Propose Substitution or Modification. Prior to the deadline for submitting a protest, or at such other time as the Solicitation Documents may otherwise specify, a Bidder or Proposer may request that the Purchasing Agent clarify any provision of the Solicitation Documents or may propose a change, modification or substitution, including, without limitation, a modification to Contract terms or conditions or a modification of the plans or specifications for a project. The clarification to a potential Offeror, whether orally or in writing, does not change the Solicitation Documents and is not binding on Home Forward unless Home Forward amends the Solicitation Documents by Addenda. Failure to timely request clarification or submit a request for substitution or modification shall be deemed acceptance of all of the terms and conditions of the Solicitation Documents.

10.10 Addenda to Solicitation Documents.

10.10.1 **Form.** Changes to Solicitation Documents shall be made by written Addenda. The Offeror shall acknowledge, in writing, receipt of all Addenda issued, on the Bid or Proposal form, or separately by letter, prior to the Solicitation Closing.

10.10.2 **Distribution.** Addenda shall be sent by mail, fax or e-mail to every prospective Offeror on file with Home Forward who has obtained the Solicitation Documents from Home Forward.

10.10.3 **Timeliness.** Addenda shall be issued at least three (3) business days prior to the Closing, unless otherwise stated in the Solicitation Documents or subsequent Addenda.

10.11 Pre-Closing Modification of Offers and Withdrawal of Offers.

10.11.1 **Modifications.** An Offer, once submitted, may be modified in writing by the Offeror prior to the time and date set for Solicitation Closing. Any modifications shall be prepared on the company letterhead, signed by an authorized representative of the Offeror, and state that the new document supersedes or modifies the prior Offer. It is the Offeror's responsibility to ensure that the modification is received by Home Forward prior to the date and time established for Solicitation Closing. The modification should be delivered in an envelope that is clearly marked with the Offeror's name, the Solicitation number, the project name, if any, the date and time of Solicitation Closing, and identified as a "Bid Modification" or "Proposal Modification."

10.11.2 **Withdrawals Prior to Solicitation Closing.**

10.11.2.1 Offers may be withdrawn by written notification on company letterhead signed by an authorized representative of the Offeror and received prior to the date and time established for the Solicitation Closing. It is the Offeror's

responsibility to ensure that the withdrawal is delivered to Home Forward in an envelope that is clearly marked with the Offeror's name, the Solicitation number, the project name, if any, the date and time of Solicitation Closing, and identified as "Bid Withdrawal" or "Proposal Withdrawal."

10.11.2.2 Withdrawn Offers shall be returned to the Offeror unopened.

10.12 Manner of Offer.

10.12.1 **Documents.** Completed Offer forms and documents as specified or provided in the Solicitation package furnished to Offerors must be typed or prepared in ink and signed by an authorized representative of the Offer. Alterations or erasures shall be initialed in ink by the person signing the Offer.

10.12.2 **Samples and Descriptive Literature.** Product samples, specifications or other descriptive information or literature may be required of each Offeror in order to evaluate required characteristics of the items offered. Submission requirements and information on returning items shall be included in the Solicitation Documents.

10.12.3 **Identification of Offers.** To ensure proper identification and special handling, Offers should be submitted to the address listed on the Solicitation notice in a sealed envelope appropriately marked with the name of the Offer, the Solicitation number, the name of the project, and the date and time of the Closing. Home Forward shall not be responsible for the proper identification and handling of an Offer not in conformance with these requirements.

10.12.4 **Receipt of Offer.** It is the Offeror's responsibility to ensure that the Offer is received by Home Forward prior to the stated Closing.

10.12.4.1 **Receipt.** Upon receipt by Home Forward, each Offer and modification shall be time stamped or marked by hand, not opened, and shall be stored in a secure place until the Offers are opened. If Offers or modifications are opened inadvertently or are opened prior to the time and date set for opening, the Offers shall be resealed and stored for opening at the correct time. When this occurs, documentation of this procedure shall be placed in the Solicitation file.

10.12.4.2 **Opening and Recording.** Offers and modifications shall be opened publicly, immediately after the deadline for the submission of Offers and in the place designated by the Solicitation Documents. With regard to Bids, The Purchasing Agent shall designate representatives who will determine and declare the precise time of day for purposes of establishing the Bid submittal deadline, open each timely received Bid, read aloud the bid price, and record bid prices on a Bid tabulation sheet.

10.12.4.3 **Availability.** The opened Offers shall be available for public inspection subject to the need of Home Forward to evaluate such Offers prior to Notice of Intent to Award, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. Home Forward legal counsel shall

verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Material so designated shall accompany the Offer and shall be readily separable from the Offer in order to facilitate public inspection of the non-confidential portion of the Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

10.12.5 Late Offers, Late Withdrawals, and Late Modifications. An Offer received after Closing is late. Any request for Offer withdrawal or modification received after Closing is late. A late Offer, late Offer modification, or late Offer withdrawal shall not be considered and shall be returned to the Offeror unopened unless the Purchasing Agent, in his or her discretion, determines that the late submittal or withdrawal increases competition, does not prejudice any Offeror, does not compromise the integrity of the competitive system or is in the best interest of Home Forward.

10.12.6 Mistakes in Offers.

10.12.6.1 General. Clarification or withdrawal of an Offer because of an inadvertent, nonjudgmental mistake in the Offer requires careful consideration to protect the integrity of the competitive bidding system and to ensure fairness. Except as provided in this Rule, if the mistake is attributable to an error in judgment, the Offer may not be corrected. Offer correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of Home Forward or does not prejudice other Offerors.

10.12.6.2 Mistakes Discovered Before Offers Are Opened. Mistakes discovered before Offers are opened may be corrected as provided above.

10.12.6.3 Mistakes Discovered After Offers Are Opened But Before Award.

(a) **Minor Informalities.**

(i) **Definition.** Minor informalities are matters of form rather than substance or insignificant mistakes that can be waived or corrected without prejudice to other Offerors or Home Forward.

(ii) **Examples.** Minor informalities include, but are not limited to, an Offeror's failure to return the required number of signed Solicitation Documents; failure to sign in the designated block so long as the Solicitation Documents otherwise evidence an intent to be bound; or failure to acknowledge receipt of an Addendum to the Solicitation Documents if it is clear that the Offeror received the Addendum and intended to be bound by its terms or if the Addendum did not affect price, quantity, quality or delivery time.

(iii) **Not Included.** Minor informalities do not include mistakes that affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving unit price.

(iv) **Procedure.** If Home Forward discovers a minor informality after Offers are opened but before award, Home Forward may, in its discretion, correct or waive the minor informality if it is in its interest to do so and may request a written clarification from an Offeror or make other determinations.

(b) **Mistakes Where Intended Offer is Not Evident.** The Purchasing Agent must reject an Offer in which a mistake is clearly evident on the face of the Offer, and the intended Offer is not clearly evident or cannot be substantiated from accompanying documents or objectively verified through other means.

10.13 Irrevocability of Offer During Time for Consideration. Offers shall be valid and irrevocable for sixty (60) Days after the Offers are opened, or for the number of days specified in the Solicitation Documents. If circumstances arise that require an extension of time for consideration of award after the Offers have been opened, the Purchasing Agent may request in writing that the Offerors extend the time during which Home Forward may accept their Offers.

10.14 Cancellation of Solicitation.

10.14.1 **Cancellation in the Public Interest.** A Solicitation may be cancelled, in whole or in part, when it is determined by the Purchasing Agent to be in the public interest to do so. The reasons for cancellation shall be documented and be made part of the Solicitation file. Cancellation may be made at any time prior to Home Forward's execution of the Contract.

10.14.2 **Cancellation When Offer Period Expires.** The Solicitation will be cancelled if the time for consideration of Offers has expired without an award, unless the extension of time has been mutually agreed upon in writing between Home Forward and one or more Offerors, including the apparent low Bidder in the case of Bids.

10.14.3 **Cancellation Prior to Closing.** When a Solicitation is cancelled prior to Closing, a written notice of cancellation shall be sent to all holders of Solicitation Documents. All Offers received shall be returned to Offerors unopened. When a Solicitation is cancelled after the Offers are opened but prior to award, the notice shall be sent to all responsive Offerors. After the notice of intent to award is given, notice is required to be given only to the successful Offeror.

10.14.4 **Cancellation After Closing; Retention of Offers.** In the event that a Solicitation is cancelled after Closing and Offers are opened, all Offers received shall become part of the Solicitation file and the security bonds, if any, shall be returned.

10.15 Negotiation When Bids or Quotes Exceed Estimates. Whenever all Bids or Quotes received under a price-based Solicitation method exceed the Purchasing Agent's estimate

for the project or procurement, the Purchasing Agent may negotiate the Contract Price with the Offeror that has submitted the lowest responsible Bid or Quote. The Purchasing Agent may negotiate changes to the Goods, project or Services that reduce the price as well as changes to Contract provisions that are not required by law or these Rules, so long as the scope of the Contract is not changed. For purposes of this Rule, the scope of a Contract is changed if the pool of potential Offerors who would qualify to submit Bids or Quotes under a new Solicitation would be different from or larger than the pool of potential Offerors who were qualified to submit Bids or Quotes under the initial Solicitation.

10.16 Notice of Intent. The Purchasing Agent may, but shall not be required to issue a notice of intent to renew or award any Contract which is not awarded pursuant to an advertised Invitation to Bid or Request for Proposals.

11. COMPETITIVE SEALED BIDS

11.1 Contents of Bid Documents. The Bid Documents shall provide sufficient information for prospective Bidders to evaluate their interest and qualifications to supply the specified Goods or Services, and to determine a Bid price. Prior to the submittal date, Bidders shall have the opportunity to review all Home Forward background documents as described and in the manner set forth in the Bid Documents.

The Bid Documents, at a minimum, shall include the following:

11.1.1 The Closing date and time after which Bids will not be received and the place at which the Bids may be submitted;

11.1.2 The name and title of the person designated for receipt of Bids, the date, time and place for the Opening of Bids, and the contact person for the Solicitation, if different;

11.1.3 The date that prequalification applications must be filed under ORS 279B.120 and the class or classes of work for which Bidders must be prequalified, if prequalification is a requirement;

11.1.4 A description of the Goods or Services desired, specifications and drawings, delivery or performance schedule, inspection and acceptance requirements, and overall scope of work and other information, including the project management structure and the support or resources to be provided by Home Forward, if any;

11.1.5 The form and instructions for submission of Bids and any other special information;

11.1.6 The anticipated Solicitation schedule, deadlines, protest process, and evaluation process;

11.1.7 The date, time and place that the Bids will be publicly opened;

11.1.8 Explanation of how Home Forward will notify Bidders of addenda and how Home Forward will make the addenda available;

11.1.9 If Home Forward intends to award contracts to more than one Bidder pursuant to OAR 137-047-0600(4), a description of the manner in which Home Forward will determine the award;

11.1.10 A description of applicable policy and program compliance to include Disparity Program requirements, if any;

11.1.11 The manner and time in which protests that the Bid process is contrary to law or that a Bid Document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name may be submitted, the name and title of the person designated to receive protests, the manner in which the Purchasing Agent will respond to the protest and the protester's rights of appeal to the Board, if any;

11.1.12 The manner and time in which potential Bidders may submit requests for clarification, substitution and modification to the Solicitation Documents, the name and title of the person designated to receive such requests and a description of the manner in which Home Forward will respond to requests and issue written addenda;

11.1.13 Special evaluation criteria, if any;

11.1.14 The date, time and place of the pre-Closing conference, if any, whether attendance is mandatory or voluntary, and a provision that statements made by Home Forward's representatives at the conference are not binding upon Home Forward unless confirmed by written Addendum;

11.1.15 A statement that Home Forward may, in its discretion, reject any Bid that does not comply with all prescribed public procurement procedures and requirements;

11.1.16 A statement that Home Forward may reject for good cause any or all Bids and/or cancel or delay the Solicitation, or cancel an award at any time prior to execution upon Home Forward's finding that it is in the public interest to do so and a statement that the cost of submission of a Bid is not recoverable upon such rejection, delay or cancellation;

11.1.17 A statement that the Bid must contain a statement indicating whether the Bidder is a "Resident Bidder," as defined in ORS 279A.120;

11.1.18 A statement, if the Contract is for Public Works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), no Bid will be received or considered by Home Forward unless the Bid contains a statement by the Bidder that ORS 279C.840 or 40 U.S.C. 276a will be complied with;

11.1.19 Information addressing whether a Contractor or subcontractor must be licensed under ORS 468A.720 (asbestos abatement);

11.1.20 A statement that a Bid for a Public Improvement Contract may not be received or considered by Home Forward unless the Bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board;

11.1.21 The address of the office where the specifications of the work, material or things may be reviewed or obtained;

11.1.22 Bid security requirements, if any;

11.1.23 Contract provisions, terms and conditions to be tendered to the successful Bidder, including a provision indicating whether the successful Bidder can assign the contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval of Home Forward;

11.1.24 A statement that the Bidder is required to certify that the Bidder has not discriminated against minority, women or emergency small business enterprises in obtaining any required subcontracts;

11.1.25 A statement that the Bidder must provide a valid City of Portland business license, Construction Contractors Board (CCB) license or other license as may be required;

11.1.26 If a multi-year Contract, a provision that makes the Contract subject to appropriation of funds and allows Home Forward to modify, amend or terminate without prejudice;

11.1.27 A statement that Bidders are responsible for noting and abiding by the terms and conditions included in the Bid Documents and Addenda and by Home Forward's Public Contracting Rules;

11.1.28 A statement that by signing and submitting the Bid form, the Bidder is acknowledging acceptance of and the intent to abide by the terms and conditions of the Bid Documents and form of Contract to be entered into; and

11.1.29 If a Public Improvement Contract, a description of the manner in which first-tier subcontractor disclosures must be submitted, a copy of the disclosure form substantially as provided in ORS 279C.370 and a statement that a Bid will be considered non-responsive and ineligible for award if the Bidder does not submit a subcontractor disclosure form in the manner and within the time required by ORS 279C.370.

11.2 Deposit for Bid Documents. Home Forward may require a deposit or charge for reasonable costs for Bid Documents and mailing. A deposit may also be required when, in the judgment of the Purchasing Agent, it is necessary to encourage the return of detailed plans, specifications or other supporting information used by potential Bidders in preparing the Bid.

11.3 Negotiation with Bidders.

11.3.1 **General.** There shall be no negotiations with any Bidder prior to the award of a Contract.

11.3.2 **All Bids Exceeding Cost Estimates.** If a project is competitively bid and all responsive Bids from reasonable Bidders exceed the project cost estimate, Home Forward may negotiate with the lowest responsible Bidder as provided in Section 10.15 of these Rules.

11.4 Bid Evaluation.

11.4.1 **General.** The Contract, if awarded, shall be awarded to the lowest responsive and responsible Bidder who meets the Standards of Responsibility applicable to the Contract.

The Purchasing Agent reserves the right to waive any informality in a Bid; reject any Bid not in compliance with the Bid Documents; reject any Bid not in compliance with these Rules or state statute regarding public contracting; or reject all Bids as provided in these Rules.

11.4.2 **Bid Tabulation Sheet.** The Purchasing Agent shall ensure that a written record is produced that indicates how each Bid responds to the criteria set forth in the Bid Documents. The Bid tabulation sheet shall be made available upon request for public review after Home Forward has evaluated all Bids.

11.4.3 Special Requirements to Determine Responsiveness.

11.4.3.1 **General.** The Bid Documents shall set forth any special requirements and criteria that will be used to determine which Bidders are responsive Bidders.

11.4.3.2 **Review of Unit Bid Prices.** Unit Bid prices or Bid alternatives will be reviewed for unbalanced pricing or Bid loading.

11.4.3.3 **Considerations for Establishing Special Requirements.** Any special requirements need not be precise predictors of actual future costs, but to the extent possible, such requirements shall:

- (a) Be reasonable estimates based upon information Home Forward has available concerning future use; and
- (b) Treat all Bids equitably.

11.4.3.4 **Special Requirements.** Examples of special requirements include, but are not limited to transportation costs, volume weighing, trade-in allowance, depreciation allowances, cartage penalties and ownership or life cycle cost formulas.

11.4.4 Product or Service Acceptability.

11.4.4.1 The Bid Documents shall set forth the criteria to be used in determining product or Service acceptability. The Purchasing Agent may require the submission of samples, descriptive literature, technical data, or other material, and may also require any of the following prior to award:

- (a) Demonstration, inspection or testing of a product or Service prior to award for such characteristics as quality of workmanship;
- (b) Examination of such elements as appearance, finish, taste, or feel; or
- (c) Other examinations to determine whether the product or Service conforms to the Bid Documents.

11.4.4.2 The acceptability evaluation is conducted only to determine that a Bid is responsive to the Bid Documents. A Bidder's product or Service that does not meet the minimum requirements may be rejected in Home Forward's discretion. Product or Service rejections are not considered Debarments and are not grounds for appeal under state law.

11.4.4.3 In the case of a non-resident Bidder, the Purchasing Agent shall add a percentage increase to the Bid equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides. For the purposes of administering this section, Home Forward shall rely on information published annually by the Oregon Department of Administrative Services and shall only apply the percentage increase if such application is consistent with applicable federal laws.

11.4.5 **Low Tie Bids.** Low tie Bids are Bids from responsive and responsible Bidders that are identical in price, fitness, availability and quality and that meet all the requirements and criteria set forth in the Bid Documents. Low tie Bids shall be awarded as follows:

11.4.5.1 Home Forward shall prefer Goods or Services that have been manufactured or produced in this state pursuant to ORS 279.021(1); or if still tied,

11.4.5.2 Home Forward shall then prefer the Bidder whose principal offices or headquarters are located in Oregon; or if still tied,

11.4.5.3 Home Forward shall then prefer the Bidder whose principal offices or headquarters are located in Multnomah, Washington, or Clackamas County; or if still tied,

11.4.5.4 Home Forward shall then prefer the Bidder whose principal offices or headquarters are located in the City of Portland; or if still tied,

11.4.5.5 Award shall be made by drawing lots among the remaining Bidders. Such Bidders shall be given notice and an opportunity to be present when the lots are drawn.

11.4.5.6 If none of the tied Bidders is located in Oregon, award of the Contract shall be made by drawing lots. Such Bidders shall be given notice and an opportunity to be present when the lots are drawn.

11.5 Rejection of Individual Bids. The Purchasing Agent may reject any Bid or any separate alternate Bid required or permitted by the Bid Documents that is not responsive or any Bidder that does not meet the Standards of Responsibility applicable to the Contract.

11.6 Contract Award.

11.6.1 **Notice of Intent to Award.** Unless otherwise provided in the Bid Documents, the Purchasing Agent shall provide written notice by regular mail or facsimile to all Bidders of Home Forward's intent to award the Contract. The notice of award shall not be final until the later of the following:

11.6.1.1 Seven (7) Days after the date of the notice, unless otherwise provided in the Bid Documents; or

11.6.1.2 Until the Purchasing Agent provides a written response to all timely filed protests, if any, that denies the protest and affirms the award.

11.6.2 **Prompt Execution of Contract.** Upon notice of Contract award, the successful Bidder shall furnish insurance and bond information within the timelines set forth in the Bid. Failure to execute the Contract or to provide the required information within the required timelines may result in the rejection of the Bid.

11.6.3 **Non-Resident Bidder.** If the Contract Price exceeds \$10,000, and the Contractor is a contract non-resident Bidder, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract terms of payment, length of Contract and such other information as the Department of Revenue may require before final payment can be received on the Contract. A copy of the report shall be forwarded to Home Forward. Home Forward shall satisfy itself that the above requirements have been complied with before it issues final payment.

11.6.4 **Public Improvement Contracts:** Performance Bond; Payment Bond; Waiver of Bonds in Case of Emergency.

11.6.4.1 A successful Bidder or Proposer for a Public Improvement Contract in excess of \$25,000 shall promptly execute and deliver to Home Forward the following bonds:

(a) A performance bond in an amount equal to the full Contract Price conditioned on the faithful performance of the Contract in

accordance with the plans, specifications and conditions of the Contract. The Performance Bond must be solely for the protection of Home Forward. If the Public Improvement Contract is with a single person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the Contract must also be for the preparation and completion of the design and related services covered under the Contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the Contract, or longer if provided for in the Contract, for damages of any nature, economic or otherwise, including corrective work attributable to the design aspect of a Design/Build project, or for the costs of design revisions needed to implement corrective work. The Board may waive the requirement of a performance bond. The Purchasing Agent may permit the successful Bidder to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

(b) A payment bond in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

(c) If the Public Improvement Contract is with a single person or entity to provide construction manager and general contractor services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the Contractor shall provide the required performance and payment bonds upon execution of an amendment establishing the guaranteed maximum price. Home Forward shall also require the Contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

(d) Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to Home Forward, and shall be in a form approved by Home Forward.

(e) In cases of emergency, or when the interest or property of Home Forward probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and a good and sufficient payment bond for the faithful performance of any Public Improvement Contract may be excused, if a declaration of such emergency is made in accordance with these Rules.

(f) The Purchasing Agent may require payment and performance bonds for other Public Contracts. Such requirements shall be expressly set forth in the Bid Documents.

(g) Upon Home Forward's request, the apparent successful Bidder must furnish the required payment and performance bonds within ten (10) Days, but in no event may the bonds be delivered after the commencement of the labor or other Services the payment and performance of which are to be secured by the bonds. If the Bidder fails to furnish the bond within the ten (10) Day period, Home Forward may reject the Bid and award the Contract to the next lowest responsive and responsible Bidder, and, at Home Forward's discretion, the Bidder shall forfeit its Bid security.

12. REQUESTS FOR PROPOSALS

12.1 Contents of Request Documents. A Request for Proposals must contain the same materials and information as the Bid Documents. In addition, the Request for Proposals Solicitation Documents must:

12.1.1 **Negotiable Contract Provisions.** Identify those contractual terms or conditions, if any, that Home Forward wishes to reserve for negotiation with Proposers, and may also:

12.1.1.1 Request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals; or

12.1.1.2 Contain or incorporate the form and content of the Contract that Home Forward will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with Proposers.

12.1.2 **Method of Selection.** Announce the method of Contractor selection that Home Forward intends or reserves the right to use, which methods may include, but are not limited to, negotiations with the highest ranked Proposer, competitive simultaneous or ranked negotiations, multiple-tiered competition designed to identify a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower-ranked Proposers, or any combination of methods;

12.1.3 **Evaluation Criteria.** Contain a description of the manner in which Proposals will be evaluated, including the relative importance of price and any other evaluation factors used to rate the Proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the Purchasing Agent will develop and provide notice of the criteria and evaluation methods to be used in each subsequent tier; and

12.1.4 **Time for Consideration.** Contain a description of the period of time during which Proposals may be considered and will be irrevocable and may provide for

extension of the time for consideration of Proposals for Proposers who proceed into competitive range evaluations.

12.2 Disclosure of Proposals.

12.2.1 **Before Award.** Notwithstanding ORS 192.410 to 192.505, Proposals may be opened in a manner to avoid disclosure of contents to competing Proposers during, when applicable, the process of negotiation, but the Home Forward shall record and make available the identity of all Proposers as part of Home Forward's public records from and after the opening of the Proposals. Notwithstanding ORS 192.410 to 192.505, Proposals are not required to be open for public inspection until after the notice of intent to award a Contract is issued. The fact that Proposals are opened at a meeting, as defined in ORS 192.610, does not make their contents subject to disclosure, regardless of whether the public body opening the Proposals fails to give notice of or provide for an executive session for the purpose of opening Proposals.

12.2.2 **After Intent to Award.** Notwithstanding any requirement to make Proposals open to public inspection after Home Forward's issuance of notice of intent to award a Contract, Home Forward 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.

12.2.3 **Prior to Solicitation Closing.** If a Request for Proposals is cancelled after Proposals are received, but prior to the Closing of the Proposals, Home Forward may return a Proposal to the Proposer that made the Offer. Home Forward shall keep a list of returned Proposals in the file for the Solicitation.

12.3 Tours, Demonstrations and Discussions. As provided in the Request for Proposals or in written Addenda issued thereunder, Home Forward may conduct site tours, demonstrations, individual or group discussions and other informational activities with proposers before or after the opening of Proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the Solicitation requirements or to consider and respond to requests for modifications of the Proposal requirements. Home Forward shall use procedures designed to accord Proposers fair and equal treatment with respect to any opportunity for discussion and revision of Proposals.

12.4 Methods of Selection. For purposes of evaluation, when provided for in the Request for Proposals, or in written Addenda issued at any time during the Solicitation, Home Forward may employ methods of Contractor selection that include, but are not limited to:

12.4.1 An award or awards based solely on the ranking of initially submitted Proposals;

12.4.2 Discussions leading to best and final Offers, in which Home Forward may not disclose private discussions leading to best and final Offers;

12.4.3 Discussions leading to best and final Offers, in which Home Forward may not disclose information derived from Proposals submitted by competing Proposers;

12.4.4 Serial negotiations, beginning with the highest-ranked Proposer and negotiating with the second-ranked Proposer only after the highest-ranked Proposer is eliminated;

12.4.5 Competitive negotiations in which Home Forward enters into separate but simultaneous negotiations with all Proposers in a final competitive tier;

12.4.6 Multiple-tiered competition designed to identify, at each level, a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower-ranked Proposers;

12.4.7 A multi-step Request for Proposers requesting the submission of unpriced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals Home Forward had determined to be qualified under the criteria set forth in the initial Request for Proposals; or

12.4.8 Any combination of methods described in this paragraph, as determined by the Purchasing Agent to be most likely to result in selection of the Contractor who will best serve the needs of Home Forward.

Revisions of Proposals may be permitted after the submission of Proposals and before award during negotiations or during any competitive range evaluation.

12.5 Post-Closing Addenda. After the opening of Proposals, Home Forward may issue or electronically post an addendum to the Request for Proposals that modifies the criteria, rating process and procedure for any tier of competition before the start of the tier to which the Addendum applies. Home Forward shall send an Addendum that is issued by a method other than electronic posting to all Proposers who are eligible to compete under the Addendum. Home Forward shall issue or post the Addendum at least five (5) Days before the start of the subject tier of competition or as otherwise determined by Home Forward to be adequate to allow eligible Proposers to prepare for the ensuing competition.

12.6 Competitive Range. In the Request for Proposals, Home Forward shall describe the methods by which Home Forward will make the results of each tier of competitive evaluation available to the Proposers who competed in the tier.

12.7 Posting of Notice of Intent. Home Forward shall issue the notice of intent to award to, at a minimum, each Proposer who was evaluated in the final competitive tier.

12.8 Selection for Award. If a Contract is awarded, Home Forward shall award the Contract to the responsible Proposer whose Proposal Home Forward determines in writing to be the most advantageous to Home Forward based on the evaluation process and evaluation factors described in the Request for Proposals, any applicable and federally-permissible preferences described in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by the Request for Proposals. Other factors may not be used in the evaluation. When the Request for Proposals specifies or authorizes the award of multiple Public Contracts, Home Forward shall award Public Contracts to the responsible Proposers who qualify for the award of a Contract under the terms of the Request for Proposals.

12.9 Request for Preliminary Documents. Home Forward may issue a Request for Information, a Request for Interest, a Request for Qualifications or other preliminary documents to obtain information useful in the preparation of a Request for Proposals.

12.10 Cancellation of Solicitation. Home Forward may cancel a Solicitation under a Request for Proposals for the same reasons, and in the same manner, as is provided for cancellations of Solicitations under Invitations to Bid.

13. INFORMAL SOLICITATION. An informal Solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to entities selected by the Purchasing Agent, or in any other manner which the Purchasing Agent deems suitable for obtaining competitive Quotes or Proposals.

13.1 A minimum of three (3) written or verbal Quotes or Proposals, based on a written scope of work approved by the Purchasing Agent, shall be obtained. The written description shall also describe the criteria for award.

13.2 A written record of all Entities solicited and Quotes or Proposals received shall be maintained. If three (3) Quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the Quotes or Proposals.

13.3 If an original Contract does not exceed \$100,000, but it is anticipated that Amendments increasing the value of the Contract to greater than the limit will be negotiated, the selection of a Contractor to perform such work shall be guided by the process appropriate for the anticipated expenditure level.

13.4 If the award is made solely on the basis of price, Home Forward shall award the Contract to the Offeror that submits the lowest responsive Quote or Proposal and meets the Standards of Responsibility. If the award is based on criteria other than, or in addition to, price, Home Forward shall award the Contract to the Offeror that will best serve the interest of Home Forward, based on the criteria for award and the Standards of Responsibility.

14. QUALIFIED POOLS.

14.1 General. As provided in this section, the Purchasing Agent may invite prospective Contractors to submit their qualifications to Home Forward for inclusion as participants in a pool of Contractors qualified to provide certain types of Goods or public improvements or to perform certain types of Services, including Personal Services and construction services. Unless expressly provided in a Qualified Pool Contract, participation in a Qualified Pool will not entitle a participant to the award of any Home Forward Contract.

14.2 Advertisement. The invitation to participate in a Qualified Pool shall be advertised initially by publication in a newspaper of general circulation in the Portland metropolitan area, and in any other manner which the Purchasing Agent deems necessary or beneficial to Home Forward's requirements. In addition, if a Qualified Pool is maintained for a period of time exceeding one year, or renewed on an annual basis, the Solicitation will be continuously or periodically open to new applicants and will be advertised by republication at least once each year.

14.3 Qualifications. Requests for Qualifications shall describe the scope of Goods or Services for which the pool will be maintained, the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of Home Forward.

14.4 Additional Conditions of Participation. In addition to qualification to provide the Goods or perform the Services described for the pool, Home Forward may require, as a condition of participation, that applicants enter into a Qualified Pool Contract containing all terms required by Home Forward, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and other terms concerning requirements for the submission, on an annual or other basis, of evidence of continuing compliance with Home Forward's requirements for inclusion in the pool.

14.5 Use of Qualified Pools. Subject to the provisions of these Rules concerning methods of Solicitation for classes of Contracts, the Purchasing Agent shall award all Contracts for Goods, improvements or Services of the type for which a Qualified Pool is created from among the pool's participants, unless the Purchasing Agent determines that the best interests of Home Forward require Solicitation by public advertisement, in which case, pool participants shall be notified of the Solicitation and invited to submit competitive Proposals.

14.6 Amendment and Termination. The Purchasing Agent may discontinue a Qualified Pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving at least thirty (30) Days' prior notice to all participants in the Qualified Pool.

14.7 Protest of Failure to Qualify. The Purchasing Agent shall notify any applicant who fails to qualify for participation in a pool that it may appeal the Purchasing Agent's decision to the Board in the manner described in Section 17.

15. CONTRACT AMENDMENTS.

15.1 Amendments to Contracts for Goods and Services. Home Forward may amend a Contract for Goods and Services without additional competition in any of the following circumstances:

15.1.1 The Amendment is within the scope of the Solicitation as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approval of the Special Procurement or the Contract, in that order. An Amendment is not within the scope of the Solicitation if Home Forward determines that if it had described the changes to be made by the Amendment in the Solicitation Documents, it would likely have increased competition or affected award of the Contract.

15.1.2 These Rules otherwise permit Home Forward to award a Contract without competition for the Goods or Services to be procured under the Amendment.

15.1.3 The Amendment is necessary to comply with a change in law that affects performance of the Contract.

15.1.4 The Amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the Amendment is advantageous to Home Forward, subject to all of the following conditions:

15.1.4.1 The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.

15.1.4.2 Home Forward determines that, with all things considered, the amended Contract is at least as favorable to Home Forward as the unamended Contract.

15.1.4.3 The amended Contract does not have a total term greater than allowed in the Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if multiple Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than the longest term of any of the prior Contracts.

15.2 Small or Intermediate Goods and Services Contracts. Home Forward may amend a Contract awarded as small or intermediate Procurement for Goods and Services, provided that the total increase in Contract Price does not exceed \$5,000 for small Procurements or \$100,000 for intermediate Procurements.

15.3 Price Agreements. Home Forward may amend a Price Agreement as follows:

15.3.1 As permitted by the Price Agreement;

15.3.2 If the circumstances set forth in ORS 279B.140(2) exist; or

15.3.3 As permitted by applicable law.

15.4 Contract Amendments to Personal Services Contracts. Home Forward may amend a Personal Services Contract under the following circumstances:

15.4.1 If Home Forward, in its sole discretion, determines that the Amendment is within the scope of the Solicitation Document and that the Amendment would not materially impact the field of competition for the Personal Services described in the final form of the original Solicitation Document. In making this determination, Home Forward shall consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the Solicitation Document, if the Home Forward reasonably believes that the number of Proposers would not

significantly increase if the Solicitation Document were re-issued to include the additional services.

15.4.2 If the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

15.5 Changes to the Work and Contract Amendments for Contracts for Construction Services.

15.5.1 **Definition.** As used in this Rule, “Changes to the Work” means a mutually agreed upon change order, or a construction change directive or other written order issued by Home Forward to the Contractor requiring a change in the work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or Contract time for the changed work.

15.5.2 **Changes Provisions.** Changes to the Work are anticipated in construction and, accordingly, Home Forward shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize Home Forward to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract’s changes provisions they are not considered to be new Solicitations and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

15.5.3 **Change Order Authority.** Home Forward may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

15.5.4 **Contract Amendments.** Contract Amendments within the general scope of the original Solicitation are not considered to be new Solicitations and an exemption from competitive bidding is not required in order to add components or phases of work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

15.5.4.1 They are within the general scope of the original Solicitation;

15.5.4.2 The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in work, project site, relative dollar values, differences in risk allocation and whether the original Solicitation was accomplished through competitive bidding, competitive Proposals, competitive quotes or Emergency contract;

15.5.4.3 In the case of a Contract obtained under an Alternative Contracting Method, any additional work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

15.5.4.4 The Amendment is made consistent with this rule and other applicable legal requirements.

16. PERFORMANCE AND LIQUIDATED DAMAGES. Upon execution of the Contract and issuance of a Notice to Proceed, the successful Offeror shall complete the work according to the scope and schedule set forth in the Contract. Failure to satisfactorily complete all work within the specified performance period may result in the assessment of liquidated damages, termination, or other penalties as set forth in the Contract Documents.

17. DEBARMENT.

17.1 General. Home Forward may in its discretion disqualify a prospective Contractor from consideration for award of Home Forward's Contracts for the reasons listed below after providing the prospective Contractor with notice and a reasonable opportunity to be heard. The Debarment shall not be for a period of more than three (3) years.

17.2 Reasons for Debarment. A prospective Contractor may be Debarred from eligibility for consideration for award of Home Forward's contracts for any of the following reasons:

17.2.1 Conviction for the commission of a criminal offense in obtaining or attempting to obtain a public or private Contract or subcontract, or in the performance of such Contract or subcontract;

17.2.2 Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective Offeror's responsibility as a Contractor;

17.2.3 Conviction under state or federal antitrust statutes; or

17.2.4 Violation of a Contract provision that is regarded by Home Forward to be so serious as to justify Debarment. A violation may include, but is not limited to a failure to perform the terms of a Contract or failure to comply with any provision of law applicable to the Contractor's performance of the Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for Debarment.

17.3 Non-Waiver. The failure to Debar an Offeror for any of the above reasons shall not in any way impair or waive the Purchasing Agent's right to reject an Offer or Offeror as not responsive or not responsible.

17.4 Debarment Decision. Home Forward shall issue a written decision to Debar a prospective Offeror and shall provide the decision to the prospective Offeror immediately. The

decision shall state the reasons for the action taken and inform the prospective Offeror of the right to appeal to the decision under these Rules.

17.4.1 **Appeal of Disqualification.** Any prospective Contractor who wishes to appeal Debarment as a Contractor shall, within three (3) business days after receipt of notice of Debarment, notify the Purchasing Agent that the prospective Contractor appeals the Debarment. Immediately upon receipt of such notice of appeal, the Board shall be notified.

17.4.2 **Debarment Appeal Procedure.** The procedure for appeal from a Debarment pursuant to ORS 279B.130 shall be in accordance with ORS 279B.425 and the procedure for appeal from a Debarment pursuant to ORS 279C.440 through and including 279C.450. Debarment is not subject to ORS Chapter 183 et seq. except where specifically provided herein. The procedure shall be as follows:

17.4.2.1 Promptly upon receipt of notice of appeal, Home Forward shall notify the appellant of the time and place of the hearing;

17.4.2.2 The Board shall conduct the hearing and decide the appeal within thirty (30) Days after receiving notice of the appeal from the Purchasing Agent;

17.4.2.3 In the hearing, the Board shall consider de novo the notice of Debarment, the reasons listed for Debarment, and any evidence provided by the parties;

17.4.2.4 The Board shall set forth in writing the reasons for the decision;

17.4.2.5 The Board may allocate the Board's costs for the hearing between the appellant and Home Forward. The allocation shall be based upon facts found by the Board and stated in the Board's decision. If the Board does not allocate costs, the costs shall be paid by the losing party; and

17.4.2.6 The decision of the Board may be reviewed only upon a petition in the circuit court of Multnomah County filed within fifteen (15) Days after the date of the decision.

18. LEGAL REMEDIES FOR GOODS AND SERVICES CONTRACTS

18.1 Protests and Judicial Review of Special Procurements. An Affected Entity may protest the approval of a special procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a special procurement, an Affected Entity must file a written protest with the Purchasing Agent and exhaust all administrative remedies.

18.1.1 **Delivery.** Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Entity must deliver a written protest to the Purchasing Agent within seven (7) Days after the first date of

public notice of the approval of a special procurement by the Purchasing Agent, unless a different protest period is provided in the public notice of the approval of a special procurement.

18.1.2 **Content of Protest.** The written protest must include:

18.1.2.1 A detailed statement of the legal and factual grounds for the protest;

18.1.2.2 A description of the resulting harm to the Affected Entity; and

18.1.2.3 The relief requested.

18.1.3 **Protest Hearing.** If the public notice explicitly provides for a hearing at the request of an Affected Offeror, a hearing will be conducted before the Purchasing Agent no later than four (4) days after submission of the written protest. At such hearing, the Affected Offeror will have the opportunity to appear and make an oral presentation of the basis for protest.

18.1.4 **Purchasing Agent Response.** The Purchasing Agent shall not consider an Affected Entity's protest of the approval of a special procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a special procurement. The Purchasing Agent shall issue a written disposition of the protest in a timely manner. If the Purchasing Agent upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the special procurement, or revoke the approval of the special procurement.

18.1.5 **Judicial Review.** An Affected Entity may seek judicial review of the Purchasing Agent's decision relating to a protest of the approval of a special procurement in accordance with ORS 279B.400.

18.2 Protests and Judicial Review of Sole-Source Procurements. For sole-source procurements requiring public notice, an Affected Entity may protest the determination of the Purchasing Agent or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Entity must file a written protest with the Purchasing Agent or designee and exhaust all administrative remedies.

18.2.1 **Delivery.** Unless otherwise specified in the public notice of the sole-source procurement, an Affected Entity must deliver a written protest to the Purchasing Agent or designee within seven (7) Days after the first date of public notice of the sole-source procurement, unless a different protest period is provided in the public notice of a sole-source procurement.

18.2.2 **Content of Protest.** The written protest must include:

18.2.2.1 A detailed statement of the legal and factual grounds for the protest;

18.2.2.2 A description of the resulting harm to the Affected Entity; and

18.2.2.3 The relief requested.

18.2.3 **Protest Hearing.** If the public notice explicitly provides for a hearing at the request of an Affected Offeror, a hearing will be conducted before the Purchasing Agent no later than four (4) days after submission of the written protest. At such hearing, the Affected Offeror will have the opportunity to appear and make an oral presentation of the basis for protest.

18.2.4 **Purchasing Agent Response.** The Purchasing Agent or designee shall not consider an Affected Entity's sole-source procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source procurement. The Purchasing Agent or designee shall issue a written disposition of the protest in a timely manner. If the Purchasing Agent or designee upholds the protest, in whole or in part, Home Forward shall not enter into a sole-source Contract.

18.2.5 **Judicial Review.** Judicial review of the Purchasing Agent's or designee's disposition of a sole-source procurement protest shall be in accordance with ORS 279B.420.

18.3 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations. An Affected Offeror may protest exclusion from the competitive range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a written protest with the Purchasing Agent and exhaust all administrative remedies.

18.3.1 **Basis for Protest.** An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for Home Forward's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the competitive range because: their Proposals were not Responsive, or Home Forward committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.)

18.3.2 **Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a written protest to the Purchasing Agent within seven (7)

Days after issuance of the notice of the competitive range or notice of subsequent tiers or steps.

18.3.3 **Content of Protest.** The Affected Offeror's protest shall be in writing and must specify the grounds upon which the protest is based.

18.3.4 **Protest Hearing.** If the Solicitation Document explicitly provides for a hearing at the request of an Affected Offeror, a hearing will be conducted before the Purchasing Agent no later than four (4) days after submission of the written protest. At such hearing, the Affected Offeror and other interested parties will have the opportunity to appear and make an oral presentation regarding the basis for protest.

18.3.5 **Purchasing Agent Response.** The Purchasing Agent shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Purchasing Agent shall issue a written disposition of the protest in a timely manner. If the Purchasing Agent upholds the protest, in whole or in part, the Purchasing Agent may in its sole discretion either issue an Addendum reflecting its disposition or cancel the procurement or solicitation.

18.3.6 **Judicial Review.** Judicial review of the Purchasing Agent's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

18.4 Protests and Judicial Review of Solicitations. A prospective Offeror may protest the procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in 279B.405(2). Pursuant to 279B.405(3), before seeking judicial review, a prospective Offeror must file a written protest with the Purchasing Agent and exhaust all administrative remedies.

18.4.1 **Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a written protest to the Purchasing Agent not less than seven (7) Days prior to Closing.

18.4.2 **Content of Protest.** In addition to the information required by ORS 279B.405(4), a prospective Offeror's written protest shall include a statement of the desired changes to the procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

18.4.3 **Purchasing Agent Response.** The Purchasing Agent shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Purchasing Agent shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Purchasing Agent shall issue a written disposition of the protest in accordance with the timeline set forth in 279B.405(6). If the Purchasing Agent upholds the protest, in whole or in part,

the Purchasing Agent may in its sole discretion either issue an Addendum reflecting its disposition or cancel the procurement or solicitation.

18.4.4 **Extension of Closing.** If the Purchasing Agent receives a protest from a prospective Offeror in accordance with this rule, the Purchasing Agent may extend Closing if the Purchasing Agent determines an extension is necessary to consider and respond to the protest.

18.4.5 **Clarification.** Prior to the deadline for submitting a protest, a prospective Offeror may request that the Purchasing Agent clarify any provision of the Solicitation Document. The Purchasing Agent's clarification to an Offeror, whether orally or in writing, does not change the Solicitation Document and is not binding on Home Forward unless Home Forward amends the Solicitation Document by Addendum.

18.4.6 **Judicial Review.** Judicial review of the Purchasing Agent's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

18.5 Protests and Judicial Review of Contract Award. An Offeror may protest the award of a Contract, or the intent to award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a written protest with the Purchasing Agent and exhaust all administrative remedies before seeking judicial review of the Purchasing Agent's Contract award decision.

18.5.1 **Delivery.** Unless otherwise specified in the Solicitation Document, an Offeror must deliver a written protest to the Purchasing Agent within seven (7) Days after the award of a Contract, or issuance of the notice of intent to award the Contract, whichever occurs first.

18.5.2 **Content of Protest.** An Offeror's written protest shall specify the grounds for the protest to be considered by the Purchasing Agent pursuant to ORS 279B.410(2).

18.5.3 **Protest Hearing.** If the Solicitation Document explicitly provides for a hearing at the request of an Offeror, a hearing will be conducted before the Purchasing Agent no later than four (4) days after submission of the written protest. At such hearing, the Offeror and other interested parties will have the opportunity to appear and make an oral presentation regarding the basis for protest.

18.5.4 **Purchasing Agent Response.** The Purchasing Agent shall not consider an Offeror's Contract award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Purchasing Agent shall issue a written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Purchasing Agent upholds the protest, in whole or in part, the Purchasing Agent may in its sole discretion either award the Contract to the successful protestor or cancel the procurement or solicitation.

18.5.5 **Judicial Review.** Judicial review of the Purchasing Agent's decision relating to a Contract award protest shall be in accordance with ORS 279B.415.

18.6 Judicial Review of Other Violations. Any violation of ORS Chapter 279A or 279B by Home Forward for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in 279B.420.

19. LEGAL REMEDIES FOR PERSONAL SERVICES CONTRACTS

19.1 RFP Protest and Request for Change. Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or contract term contained in an RFP, no later than seven (7) Days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or contract terms. The Purchasing Agent will not consider any protest or request for change that is submitted after the submission deadline.

19.2 Protest of Consultant Selection.

19.2.1 Single Award. In the event of an award to a single Proposer, the Purchasing Agent shall provide to all Proposers a copy of the selection notice that Purchasing Agent sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to Purchasing Agent no later than seven (7) Days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the services described in the RFP.

19.2.2 Multiple Award. In the event of an award to more than one Proposer, the Purchasing Agent shall provide to all Proposers copies of the selection notices that the Purchasing Agent sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Purchasing Agent no later than seven (7) Days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers to include the protesting Proposer in the group of highest ranked Proposers, otherwise are not qualified to perform the services described in the RFP.

19.2.3 Effect of Protest Submission Deadline. The Purchasing Agent will not consider any protest that is submitted after the submission deadline.

19.3 Resolution of Protests. The Purchasing Agent shall resolve all timely submitted protests within a reasonable time following the Purchasing Agent's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Purchasing Agent shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

20. LEGAL REMEDIES FOR PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

20.1 Solicitation Protests. An Offeror may protest Specifications or Contract terms and conditions.

20.1.1 Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a written protest on those matters to the Purchasing Agent not less than 10 Days prior to Closing.

20.1.2 **Content of Protest.** An Offeror's written protest shall include:

20.1.2.1 A detailed statement of the legal and factual grounds for the protest;

20.1.2.2 A description of the resulting prejudice to the Offeror; and

20.1.2.3 A statement of the desired changes to the Contract terms and conditions, including any Specifications.

20.1.3 **Purchasing Agent Response.** The Purchasing Agent is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Purchasing Agent shall provide notice to the applicable Entity if it entirely rejects a protest. If the Purchasing Agent agrees with the Entity's request or protest, in whole or in part, the Purchasing Agent shall either issue an Addendum reflecting its determination or cancel the solicitation.

20.1.4 **Extension of Closing.** If the Purchasing Agent receives a written request for change or protest from an Offeror in accordance with this rule, the Purchasing Agent may extend Closing if the Purchasing Agent determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

20.2 Protest of Contractor Selection, Contract Award. An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Purchasing Agent's Contractor selection or Contract award decision.

20.3 Notice of Competitive Range. Unless otherwise provided in the RFP, when the competitive Proposal process is authorized, the Purchasing Agent shall provide written notice to all Proposers of the Purchasing Agent's determination of the Proposers included in the competitive range. The Purchasing Agent's notice of the Proposers included in the competitive range shall not be final until the later of 10 Days after the date of the notice, unless otherwise provided therein, or until the Purchasing Agent provides a written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the competitive range.

20.4 Notice of Intent to Award. The Purchasing Agent shall provide written notice to all Offerors of the Purchasing Agent's intent to award the Contract.

20.5 Right to Protest Award. An adversely affected or aggrieved Offeror may submit to the Purchasing Agent a written protest of the Purchasing Agent's intent to award within seven (7) Days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation Document.

20.5.1 **Content of Protest.** The Offeror's protest must be in writing and must specify the grounds upon which the protest is based.

20.5.2 Standing to Protest. An Offeror is adversely affected or aggrieved only if the Offeror is eligible for award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for award because:

20.5.2.1 Their Offers were nonresponsive; or

20.5.2.2 The Purchasing Agent committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

20.5.3 Effect of Protest Submission Deadline. The Purchasing Agent shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the Purchasing Agent's decision not to increase the size of the competitive range above the size of the competitive range set forth in the RFP.

20.6 Right to Protest Competitive Range. An adversely affected or aggrieved Proposer may submit to the Purchasing Agent a written protest of the Purchasing Agent's decision to exclude the Proposer from the competitive range within seven (7) Days after issuance of the notice of the competitive range, unless a different protest period is provided under the Solicitation Document.

20.6.1 Content of Protest. The Proposer's protest shall be in writing and must specify the grounds upon which the protest is based.

20.6.2 Standing to Protest. A Proposer is adversely affected only if the Proposer is Responsible and submitted a Responsive Proposal and is eligible for inclusion in the competitive range, i.e., the protesting Proposer must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the competitive range because:

20.6.2.1 Their Proposals were not responsive; or

20.6.2.2 The Purchasing Agent committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.

20.6.3 Effect of Protest Submission Deadline. The Purchasing Agent shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the Purchasing Agent's decision not to increase the size of the competitive range above the size of the competitive range set forth in the RFP.

20.7 Protest Hearing. If the Solicitation Document explicitly provides for a hearing at the request of an adversely affected Proposer, a hearing will be conducted before the Purchasing Agent no later than four (4) days after submission of the written protest. At such hearing, the adversely affected Proposer and other interested parties will have the opportunity to appear and make an oral presentation regarding the basis for protest.

20.8 Authority to Resolve Protests. The Purchasing Agent may settle or resolve a written protest submitted in accordance with the requirements of this rule.

20.9 Decision. If a protest is not settled the Purchasing Agent shall promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

20.10 Award. The successful Offeror shall promptly execute the Contract after the award is final. Home Forward shall execute the Contract only after it has obtained all applicable required documents and approvals.

21. SURPLUS PROPERTY

21.1 Surplus Property Definitions. In addition to the definitions contained in ORS 279A.250 and these Rules, the following definitions apply to these Rules on Surplus Property and do not apply to other Rules:

“Bid” means a competitive Offer to purchase advertised Surplus Property at a price specified by the bidder.

“Cash” includes U.S. currency, cashier’s checks, certified checks, traveler’s checks, money orders made payable to Home Forward, or approved credit cards.

“Direct Labor” includes all Work required for preparation, production, processing and packing of surplus property, but does not include supervision, administration, inspection and shipping.

“Employee’s Household” means all persons residing with employee.

“Employee’s Immediate Family” means the children, step-children, parents, step-parents, grandparents and spouse of employee, separately or in any combination thereof.

“Invitation to Bid” means a competitive Offer to bid on Surplus Property available for public sale and is also known as a bid advertisement.

“Not-for-profit organization” is defined in ORS 279A.250(2) and means a nonprofit corporation as defined in ORS 307.130.

“Photographic Identification” means a document that shows the bearer’s current name, address, and photographic portrait.

“Political Subdivision” includes divisions or units of Oregon local government having separate autonomy such as Oregon counties, cities, municipalities or other public corporate entities having local governing authority.

“Private Not-for-Profit Agencies” means those Agencies meeting the criteria specified in the Oregon Administrative Rules.

“Property” is defined in ORS 279A.250(3) and means personal property.

“State agency” is defined in ORS 279A.250(4) and means every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly and the courts, including the officers and committees of both, and the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

“Surplus Property” means all real or personal property, vehicles and titled equipment owned by Home Forward for which Home Forward no longer has a use, is unsuitable for use, has become too costly to repair, or is obsolete. Surplus Property does not include materials, equipment or other deconstruction material salvaged by a Contractor under a Public Improvement Contract.

21.2 Eligibility of State Agencies, Political Subdivisions and Non-Profit Organizations. Prior to offering Surplus Property for public sale, Home Forward may make Surplus Property available to public school districts; private schools; State Agencies; Political subdivisions of the State; and any non-profit organization qualified to acquire property as determined by the Home Forward. Home Forward may determine, in its sole discretion, whether to sell, donate or use a competitive process to dispose of the Surplus Property made available under this Rule.

21.3 Surplus Property Acquisition. Recipients of Surplus Property must have funds available at the time property is acquired, and pay all costs and charges incidental to the acquisition within 30 Days from the date of invoice. Invoices outstanding in excess of 90 days may result in suspension of purchasing privileges until such invoices have been paid in full. Surplus property must be available to qualified organizations (those organizations referenced in Rule 21.2) prior to public sale. Non-qualifying private entities and private citizens, separately or combined, must not be eligible to acquire surplus property except at public sales. Surplus Property acquired by qualified organizations must be used in the conduct of their official public programs and not for resale or distribution unless otherwise pre-approved by Home Forward.

21.4 Public Sales for Disposal of Surplus Personal Property.

21.4.1 Conduct. Home Forward must conduct public sales for the disposal of Surplus Property not sold or transferred pursuant to Rules 21.2 and 21.3. Methods of disposal may include, but are not limited to: internet auctions, oral auctions, sealed bid sales and fixed price retail sales, separately or in any combination thereof.

21.4.2 Eligibility. Members of the general public may participate as buyers at public sales. No employee whether full-time, part-time, temporary or an unpaid

volunteer, of Home Forward, member of the employee's household, the employee's immediate family, or any person acting on the employee's behalf may participate in public sales if the employee has had any role in declaring the item surplus, processing the item or related paperwork, or offering it for sale.

21.4.3 Conduct of Internet Auctions. Home Forward may offer Surplus Property for public sale through an internet auction provider. The public may inspect Property offered for sale at the time and place specified in the public Invitation to Bid. Home Forward reserves the right to reject any and all bids regarded as not in the best interests of the public. All items must be sold to the highest bidder. All Property must be offered "As-Is, Where-Is" with no warranty or other guarantee as to its condition or fitness for any use or purpose. Terms and conditions of the sale will be made a part of the Internet posting. A purchaser or disappointed bidder will have no recourse against Home Forward, or any of its respective officers, employees or agents. All sales will be final.

21.4.4 Payment. Full payment must be made within seven (7) Days from the date of auctions close unless otherwise specified in the public Invitation to Bid.

21.4.5 Claiming Items Purchased. Items not paid in full by the time specified in the sales terms and conditions will be canceled. Property paid for but not claimed within the time specified in the sales terms and conditions shall be considered abandoned and ownership shall be retained by Home Forward. Title to Property sold will be transferred to the purchaser when full and final payment is made, unless otherwise specified by Home Forward. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. Home Forward rejects any liability once a purchaser takes possession of a vehicle.

21.4.6 Failure to Comply. Home Forward may establish criteria to debar participants from internet auctions and other sales pursuant to this Rule. Such criteria shall be based on:

21.4.6.1 Conviction of fraud;

21.4.6.2 Unsatisfactory Internet auction service ratings;

21.4.6.3 Failure to claim purchases; or

21.4.6.4 Other documented activities determined by Home Forward to warrant debarment.

Based upon these criteria, Home Forward may debar participants from Internet auctions and participation in other sales.

21.4.7 Conduct of Auctions and Sealed Bid Sales. Home Forward must advertise the date, time and location of public auction or sealed bid sales. A public Invitation to Bid shall be available at the auction site or sales location one week before an

auction or sealed bid sale. The public may inspect property offered for sale at the time and place specified in the public Invitation to Bid. Home Forward reserves the right to reject any and all bids regarded as not in the best interests of the public. All items must be sold to the highest Bidder. All Property will be offered “As-Is, Where-Is” with no warranty or other guarantee as to its condition or fitness for use. A purchaser or disappointed Bidder will have no recourse against Home Forward or any of its respective officers, employees or agents. All sales will be final. Home Forward may require a bid security check (payable to the “District”) equal to at least ten (10) percent of the bid to accompany all sealed bids. The Invitation to Bid shall define any bid security requirements. The bid security of unsuccessful bidders will be returned within 30 Days following a Bid Opening. The successful Bidder’s bid security will be applied as partial payment on property purchased.

21.4.8 Payment. Full payment must be made on the day of the sale for all purchases unless the invitation to Bid states otherwise. In those instances where full payment is not required, a ten (10) percent down payment is required on the day of the sale. The time limit for making full payment, and the place where payment must be made will be specified in public Invitation to Bid. Payment by personal check may be accepted, at the absolute discretion of Home Forward, when presented with two (2) pieces of acceptable identification, one of which must be a photo identification (“photo I.D.”). Other acceptable identification may include major credit cards, a valid driver’s license, or valid voter’s registration card. Home Forward reserves the right, in its absolute discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by cash, cashier’s check or money order.

21.4.9 Claiming Items Purchased. Items not paid in full by the time specified in the sales terms and conditions will be canceled and bid security forfeited. Property paid for but not claimed within the time specified in the sales terms and conditions shall be considered abandoned and ownership shall be retained by Home Forward unless prior written approval is obtained from Home Forward. Title to Property sold must be transferred to the purchaser when full and final payment is made, unless otherwise specified by Home Forward. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. If payment is made by personal check, the title must be released to the vehicle purchaser in 21 Days, or when the check clears the bank. Home Forward rejects any liability once a purchaser takes possession of a vehicle.

21.4.10 Failure to Comply. In addition to its other debarment rights, Home Forward may debar participants from state sales based upon a failure to observe the procedures set forth in the sales terms and conditions or payment for purchase or bid security with a personal check, which is dishonored by a payor’s financial institution.