



BEHAVIORAL
care
NETWORK

PUBLIC CONTRACTING RULES

Effective April 1, 2006

Adopted: March 14, 2006
Adopted revision: November 28, 2006
Adopted revision: September 11, 2014
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PREFACE

Mid-Valley Behavioral Care Network (MVBCN) Public Contracting Rules are adopted by the MVBCN Board of Directors, operating as MVBCN's local contract review board, pursuant to the authority set forth in ORS Chapters 279, 279A, 279B, and 279C to govern MVBCN procedures for purchasing, contracting and the competitive process.

The 1999 Oregon Legislature enacted several bills that modified and added provisions to the public contracting laws. House Bill 2024 made it mandatory for all public contracting agencies to follow the Oregon Attorney General's Model Rules of Procedures or opt-out and adopt their own rules. These Model Rules govern procedural matters concerning the preparation, submission, receipt, and award of bids and proposals.

The 2003 Oregon Legislature adopted House Bill 2341, which reorganized and modified the public contracting laws. The revision of the public contracting laws applicable to state and local public procurement became operative March 1, 2005.

In response to the legislative changes, the Oregon Attorney General's Model Rules were revised and filed on September 1, 2004. On August 2, 2005, MVBCN adopted ORS 279B.050-.085 as its *interim* procedures for public contracting for Personal Services and adopted OAR 147-046-0110(24)(ii) as the definition for Personal Services Contracts. For the procurement of Goods and Services, MVBCN did not specifically opt-out of the Model Rules. The effect of the decision not to opt-out of the Model Rules was that MVBCN must follow the Model Rules until such time as MVBCN adopted its own rules.

On March 14, 2006, MVBCN adopted its own public contracting rules, with an effective date of April 1, 2006. The rules were revised and adopted on November 28, 2006, with an effective date of January 1, 2007.

Legislative changes were made during the 2005 and 2007 legislative sessions that affect public contracting code. The public contracting code changes that occurred during the 2007 legislative session became operative on January 1, 2008.

The 2009 Oregon Legislature adopted Oregon Laws 2009 chapter 880, which contains changes affecting public contracting code. The public contracting code changes that occurred during the 2009 legislative session became operative on January 1, 2010.

The 2011 Oregon Legislature adopted legislative changes affecting public contracting code. The public contracting code changes that occurred during the 2011 legislative session became operative on January 1, 2012.

The 2013 Oregon Legislature adopted legislative changes affecting public contracting code. The public contracting code changes that occurred during the 2013 legislative session became operative on January 1, 2014.

MVBCN has revised its public contracting rules to meet the statutory requirements outlined in the legislative changes.

Mid-Valley Behavioral Care Network

**PUBLIC CONTRACTING RULES
TABLE OF CONTENTS**

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
	Preface	
10	General Provisions	
10-0100	Purpose and Statutory Authority	1
10-0110	Definitions / Glossary	1
10-0120	Policy	9
10-0130	Application of Code / Model Rules	9
10-0170	Delegation of Authority	9
10-0200	Minorities, Women and Emerging Small Business	10
10-0300	Preference for Oregon Supplies & Services; Non-resident Bidders	10
10-0310	Reciprocal Preferences	10
10-0320	Preference for Recycled Materials	10
10-0335	Personal Services Contracts	10
10-0360	Federal Procurement Programs	11
10-0400	Cooperative Procurement	11
10-0420	Joint Cooperative Procurements	12
10-0430	Permissive Cooperative Procurements	12
10-0440	Advertisements of Intent to Establish Contracts or Price Agreement through a Permissive Cooperative Procurement	12
10-0450	Interstate Cooperative Procurements	13
10-0460	Advertisement of Interstate Cooperative Procurements	13
10-0470	Protests and Disputes	13
10-0480	Contract Amendment Authority	13
	<i>Contract Administration</i>	
10-0550	General Definitions	13
10-0556	Procurement File	14
10-0560	Amendments	14
10-0570	Reinstatement of Expired Contracts	14
10-0580	Retroactive Approvals	15
10-0590	Contract Term	15
10-0600	Ethics Policy	15
10-0630	Fragmentations	15
10-0635	MVBCN Communication with Providers	15
20	Public Procurements for Goods or Services	
20-0100	General Provisions	17
20-0110	Feasibility Determination / Cost Analysis and MVBCN Report	17
20-0200	Buy Decision	20
20-0250	Methods of Source Selection	21
20-0255	Competitive Sealed Bidding; One-step Solicitations	21

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
20-0257	Multi-step Sealed Bids	23
20-0260	Competitive Sealed Proposals	25
20-0261	Procedures for Competitive Range; Multi-tiered and Multi-step Proposals	27
20-0265	Small Procurements	31
20-0270	Intermediate Procurements	31
20-0275	Sole Source Procurements	31
20-0280	Emergency Procurements	32
20-0285	Special Procurements	32
20-0290	Cooperative Procurements	33
	<i>Procurement Process</i>	
20-0300	Public Notice of Solicitation Document	33
20-0310	Bids or Proposals are Offers	33
20-0320	Facsimile Submission of Bids or Proposals	34
20-0330	Electronic Procurement	34
	<i>Bid and Proposal Preparation</i>	
20-0400	Offer Preparation	35
20-0410	Offer Submission	35
20-0420	Pre-Offer Conferences	35
20-0430	Addenda to Solicitation Document	36
20-0440	Pre-Closing Modification or Withdrawal of Offers	36
20-0450	Receipt, Opening and Recording of Offers; Confidentiality of Offers	37
20-0460	Late Offers, Withdrawals and Modifications	37
20-0470	Mistakes	37
20-0480	Time for MVBCN Acceptance	38
20-0490	Extension of Time for Acceptance of Offer	38
20-0500	Responsibility of Bidders and Proposers	39
20-0550	Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions	39
20-0575	Debarment of Prospective Offerors	39
20-0600	Offer Evaluation and Award	39
20-0610	Notice of Intent to Award	40
20-0620	Documentation of Award	40
20-0630	Availability of Award Decisions	41
20-0640	Rejection of an Offer	41
20-0650	Rejection of All Offers	42
20-0655	Suspension of Solicitation	43
20-0660	Cancellation of Procurement or Solicitation	43
20-0670	Disposition of Offers if Procurement or Solicitation Cancelled	43
	<i>Legal Remedies</i>	
20-0700	Protests and Judicial Review Special Procurements	43
20-0710	Protests and Judicial Review Sole Source Procurements	44
20-0720	Protests and Judicial Review of Multi-tiered and Multi-step Procurements	44
20-0730	Protests and Judicial Review of Solicitations	45
20-0740	Protests and Judicial Review of Contract Award	46
20-0750	Judicial Review of Other Violations	46

<u>SECTION</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
20-0760	Review of Prequalification and Debarment Decisions	46
20-0800	Contract Amendments	46
20-0870	Termination of Price Agreements	47
30	Reserved	
40	Reserved	
50	Other	
50-0010	General Exemptions	50
50-0020	Acute Inpatient Hospital Psychiatric Care Services	50
50-0050	Copyrighted Materials	50
50-0060	Library System Materials	50
50-0070	Purchases of Used Personal Property	50
50-0080	Advertising Contracts	50
50-0090	Real Property	50
50-0110	Insurance Contracts	50
50-0120	Attorney Contracts	50
50-0125	Financial Auditor Contracts	50
50-0130	Price Regulated Items ORS 279A(f)	51
	<i>Contract Review Procedures</i>	
50-0200	Contract Review and Feasibility Determination / Cost Analysis	51
50-0300	Qualified Rehabilitation Facility Program	51
50-0500	Surplus Personal Property Disposition	52
50-0700	False Claims Act – Prohibiting Medicaid Fraud, Waste and Abuse	52
50-0800	Health Insurance Portability and Accountability Act	52

Section 10 General Provisions

10-0100 Purpose and Statutory Authority

- (1) These Rules set forth the policy and procedure for public contracting for Mid-Valley Behavioral Care Network (MVBCN). These Rules consist of the following two sections:
 - a. Section 10, which is applicable to all public contracting; and
 - b. Section 20, which describes procedures for public contracting for Goods or Services, as defined in ORS 279B.010, and for Personal Services.
- (2) At the time of adoption of these Rules, MVBCN does not contract for the services described in ORS Chapter 279C of the Oregon Public Contracting Code; therefore, no corresponding rules are contained in these Rules. If it becomes necessary to contract for such services, MVBCN shall follow the applicable rules in the Oregon Attorney General's Model Rules until such time as MVBCN prepares and adopts its own rules.
- (3) In the event of conflict between rules in this Section 10 and rules in Section 20, the rules in Section 20 take precedence over the rules in Section 10.
- (4) Notwithstanding ORS Chapters 279A and 279B, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS Chapters 279A and 279B, or these Rules, or require additional conditions in public contracts not authorized by ORS Chapters 279A and 279B, or these Rules.
- (5) Pursuant to ORS 279A.060 as well as to the Intergovernmental Agreement establishing MVBCN, the MVBCN Board of Directors shall serve as the local contract review board for MVBCN.

10-0110 Definitions / Glossary

Addendum or Addenda: An addition or deletion to, a material change in, or general interest explanation of the Invitation to Bid (ITB) or Request for Proposals (RFP) document. Addenda shall be labelled as such and distributed to all participating parties in accordance with these Rules.

Administering Contracting Agency: The contracting agency that solicits and establishes the original contract price for procurement of goods or services in a cooperative procurement.

Advertise: To make a public announcement (such as in a newspaper of general circulation; a trade publication, the Daily Journal of Commerce; or electronic posting e.g. ORPIN) of the intent to purchase goods or services for the purpose of notifying interested parties and expanding competition.

Affected Person: A person whose ability to participate in procurement is adversely affected by MVBCN's decision.

Agenda: The written document presented to the Board that details the bid, proposal and contract award recommendations; includes summary and background information.

Agreement: An understanding, in writing, between two or more competent parties, under which one party agrees to certain performance as defined in the agreement and the second party agrees to consideration for the performance rendered in accordance with the conditions of the agreement.

Amendment: A written modification (addition, deletion or supplement) to terms and conditions of an existing contract.

Appropriation: A budgeted sum of money set aside for a specific purpose.

Award: The act or occurrence of MVBCN's identification of the person, firm or organization with which MVBCN will enter into a contract following the resolution of any protest of MVBCN's selection of the

person, firm or organization, and the completion of all contract negotiations executed and delivered by MVBCN.

Bid: An offer submitted in response to an Invitation to Bid (ITB).

Bidder: A contractor that submits a bid in response to an ITB.

Blanket Purchase Order: A purchase order placed with a supplier for an established dollar amount to supply various supplies on an as-needed basis within a specified time period.

Board: The MVBCN Board of Directors.

Boilerplate: The pre-approved standard terms and conditions incorporated in solicitations, contracts, or purchase orders.

Bond:

Bid Security (Bond): A written agreement or check by which a third party guarantees that a bidder will honor its bid if a contract is awarded.

Payment Bond: A bond equal to the full contract price required of a contractor to assure fulfillment of the contractor's obligation to pay all persons supplying labor or materials in the performance of the work provided for in a contract.

Performance Bond: A bond, equal to the full contract price, executed subsequent to award by a successful bidder or proposer to protect MVBCN from loss due to the bidder's or proposer's inability or refusal to complete the contract as agreed.

Brand Name or Equal Specification: Defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes the Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

Brand Name Specification: Defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics.

Business Day: Means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding MVBCN recognized holidays.

Change Order: A written order authorizing a change in plans, specifications, or quantities within the scope of the original contract.

Class Special Procurement: A contracting procedure that differs from the procedures otherwise described in these Rules and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

Closing: The date and time announced in the solicitation document as the deadline for submitting offers.

Code: The "Public Contracting Code" as defined in ORS 279A.010(1)(bb) and "Code" means ORS Chapters 279, 279A, 279B and 279C.

Commodity Code: A system of words and numbers established to easily identify and list products or services.

Competitive Bidding: The issuing of an ITB that consists of the formal process of advertising, bid and bid opening required by ORS 279A, ORS 279B and these Rules.

Competitive Process: The ITB, RFP and informal quote or proposal process, as indicated by the context.

Competitive Proposal: The issuing of an RFP that consists of the formal process of advertising, proposal, proposal opening, and evaluation required by ORS 279A, ORS 279B and these Rules.

Competitive Quotes: The sourcing method according to Section 20-0270.

Competitive Range: The Proposers with whom MVBCN will conduct discussions, interview/presentations or negotiations, if MVBCN intends to conduct discussions, interview/presentations or negotiations in accordance with Section 20-0261.

Consultant: The person with whom MVBCN enters into a contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and who provides advice or opinion (e.g., information technology consultants). "Consultant" has the same meaning as "contractor" or "provider".

Contract Administration: The management of all facets of a contract, including amendments, which must be taken to assure compliance by all parties. This includes monitoring service or goods, maintaining open communication, making prompt payment, monitoring budget requirements, and closing out the contract when completed.

Contract Price: The maximum monetary obligation that MVBCN either will or may incur under a Contract, including bonuses, incentives, and contingency amounts, if the Contractor fully performs under the Contract.

Contract Review Board: The MVBCN Board of Directors.

Contract Review Process: The process by which every MVBCN contract is reviewed and approved as to form as well as compliance with these Rules. Review is done by MVBCN Legal Counsel and the MVBCN Executive Director or designee as set forth in Section 10-0170 below.

Contract Signature: For purposes of these Rules, Contract Signature shall mean an original ink, scanned or facsimile signature when executing final Contract Documents and subsequent contract and amending activities. (See Section 10-0550.)

Contracts Officer: The Chair or Vice-Chair of the MVBCN Board of Directors, or the MVBCN Executive Director.

Contractor: An individual or firm who agrees to furnish goods or services to MVBCN; this may include a prime contractor and/or a subcontractor. "Contractor" has the same meaning as "consultant" or "provider".

Contract-Specific Special Procurement: A contracting procedure that differs from the procedures described in these Rules and is for the purpose of entering into a single contract or number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project.

Cooperative Procurement: A procurement conducted by or on behalf of one or more contracting agencies. "Cooperative procurement" includes but is not limited to multi-party contracts and price agreements.

Cooperative Procurement Group: A group of contracting agencies joined through an intergovernmental agreement for the purpose of facilitating cooperative procurements.

Day: Unless otherwise defined, "day" is a calendar day.

Disqualification: The preclusion of a supplier from contracting with MVBCN for a period of time.

Electronic Advertisement: Electronic advertisement for a solicitation available over the Internet via (a) the world wide web or some other Internet protocol or (b) a contracting agency's electronic procurement system.

Emergency Declaration: Based on the severity of unforeseen circumstances (e.g., flooding, earthquakes, etc.), the MVBCN Board Chair or Executive Director may declare an emergency and approve public contracts without going through the standard purchasing processes.

Emergency Situation: Circumstances that are unforeseen and require immediate action to minimize risk of property damage, personal injury or substantial extraordinary expense to MVBCN or to the public.

Exemptions: Materials or services exempt from a competitive process pursuant to ORS 279A.025 and/or these Rules.

Fiscal year: The twelve-month budget period starting July 1 and ending June 30.

Foreign contractor: A contractor that is not domiciled in or registered to do business in the State of Oregon.

Goods: Supplies, equipment or materials and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that MVBCN is authorized by law to procure.

Grant: Defined in ORS 279A.010(1)(k)(A) and means: (a) An agreement under which MVBCN receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets from a grantor for the purpose of supporting or stimulating a program or activity of MVBCN and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or (b) An agreement under which MVBCN provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by MVBCN is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

Informal Quote: An informal written or verbal solicitation for pricing of goods or services.

Informality: A minor defect or variation found in a bid document or proposal response that does not affect the required specifications or scope of work.

Intergovernmental Agreement: For purposes of these Rules, an agreement in which one Public Contracting Agency enters into an agreement with another Public Contracting Agency for the exchange of goods and/or services in exchange for consideration. Intergovernmental Agreements may include, but are not limited to cooperative agreements, fee-for-services, reciprocal services, or memorandums of understanding.

Interstate Cooperative Procurement: A permissive cooperative procurement in which the administering contracting agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules or regulations to enter into public contracts and in which one or more of the participating agencies are located outside the state of Oregon.

Invitation to Bid (ITB): A solicitation document calling for offers from prospective contractors pursuant to ORS 279B.055.

Joint Cooperative Procurement: A cooperative procurement in which the participating contracting agencies or the cooperative procurement group and the agencies' or group's contract requirements or estimated contract requirements for price agreements are identified.

Lease: A contract by which one party (lessee) enters into a contract with a second party (lessor) for possession and use of real or personal property for a specified period of time at a predetermined cost.

Legally Flawed: Defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

Letter of Intent: A letter from a potential contractor declaring its intention to respond to an ITB or RFP.

Lowest Responsible Bidder: A bidder as defined in ORS 279A.010(1)(r) and means the lowest bidder who:

- (a) Has substantially complied with all prescribed public contracting procedures and requirements;
- (b) Has demonstrated that it meets the standards of responsibility set forth in Section 20-0640; and
- (c) Has not been debarred or disqualified by MVBCN under Section 20-0575.

Mandatory: The term used to identify requirements in a bid or proposal that cannot be waived.

Multi-step or Multi-tier Process: The term used to describe more than one step, phase, tier, or round in a solicitation process used in competitive sealed bidding and/or competitive sealed proposals according to ORS 279B and these Rules, where the process is staged in phases.

Negotiation: The bargaining process between two or more parties seeking to reach a mutually satisfactory agreement or settlement.

Non-Resident Bidder/Offeror: A Bidder/Offeror who is not a resident Bidder/Offeror. For the meaning of residency, see the definition of Resident Bidder/Offeror.

Non-Responsive Bid: A bid that does not conform to the mandatory or essential requirements of the ITB.

Non-Responsive Proposal: A proposal that does not conform to the mandatory or essential requirements of the RFP.

Offer: A written offer to provide goods or services in response to a solicitation document.

Offeror: A person who submits an offer.

Offering: A bid, proposal or quote.

Office of Minority, Women and Emerging Small Business or OMWESB: Defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. OMWESB is the sole authority providing certification for disadvantaged, minority and woman-owned businesses, and emerging small business.

Opening: The date, time and place announced in the ITB or RFP document for the public opening of offers.

ORPIN: The on-line electronic Oregon Procurement Information Network administered by the Oregon Department of Administrative Services, State Procurement Office, as further defined in OAR 125-246-0500.

Original Contract: The initial contract or price agreement solicited and awarded during a cooperative procurement by an administering contracting agency.

Permissive Cooperative Procurement: A cooperative procurement in which the purchasing contracting agencies are not identified.

Person: An individual, partnership, corporation, business trust, trust, estate, limited liability company association, joint venture, government agency, public corporation, or other entity with legal capacity to enter into a contract.

Personal Services: Services that are performed by an independent contractor in a personal or professional capacity; including but not limited to, services provided by an accountant, attorney, physician, counselor, consultant or architect, and as further described in Section 10-0335.

Personal Services Contract: A contract or a member of a class of contracts for personal services, as defined in Section 10-0335: Personal Services.

Personal Property: Everything subject to ownership that is not real property and has exchangeable value.

Pre-Bid or Pre-Proposal Conference: A meeting held with prospective bidders/proposers prior to solicitation of bids or proposals, to review, discuss and clarify technical considerations, specifications and standards.

Pre-Qualification: The process in which suppliers or products are evaluated for future purchase opportunities, thereby limiting consideration for future contracts to only those suppliers or products.

Price Agreement: (a) Defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with (A) no guarantee of a minimum or maximum purchase; or (B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the authorized Agency does not guarantee a minimum or maximum additional purchase. (b) The set price may exist at the outset or be determined later by an Ordering Instrument. (c) A Price Agreement as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any. (A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies or Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule's definition. (B) The Ordering Instrument may be known as a Work Order, Purchase Order or Task Order, or by another name for ordering purposes and related to the initial agreement.

Procurement Process: The act of purchasing, leasing, renting or otherwise acquiring or selling Supplies and Services. Procurement process includes each function and procedure undertaken or required to be undertaken by MVBCN to enter into, administer and obtain the performance of a Contract under the Public Contracting Code and these Rules. The Procurement process includes Contract Administration, Contract Amendments and Contract closeout.

Procurement File: Any of the following files maintained by MVBCN: a solicitation, contract, amendment, work order, or contract administration file, separately or collectively.

Product Sample: The exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

Professional Services: See Section 10-0335: Personal Services.

Project: A specific plan or task with clearly defined limits.

Proposal: A written offer submitted in response to an RFP.

Proposer: A consultant that submits a written offer in response to an RFP.

Protest: A complaint received from a bidder or proposer regarding a governmental administrative action or decision; normally in relation to bid or proposal processes and/or contract awards.

Provider: The supplier, contractor or consultant providing supplies and services. "Provider" has the same meaning as "consultant" or "contractor".

Public Agency: Any agency, political subdivision, or municipal corporation of the State of Oregon.

Public Contract: A contract as defined in ORS 279A.010 and means a sale or other disposal, or a purchase, lease, rental or other acquisition for Services and Supplies. Public Contract does not include Grants.

Public Contract Review Board: The MVBCN Board of Directors serving as the local contract review board (LCRB) pursuant to ORS 279A.060.

Purchasing Contracting Agency: A contracting agency that procures goods or services or public improvements from a contractor based on the original contract established by an administering contracting agency.

Quotes: A written or oral response to a request for prices, rates or other conditions under which an offeror would provide goods and services or personal services as described in the informal solicitation document.

Reinstatement of Expired Contracts: The action of reinstatement of an expired contract that was previously properly executed containing all the required approval signatures.

Request for Information (RFI): Typically used to determine if sufficient information exists to develop specifications for an RFP. It is primarily used for highly technical projects.

Request for Proposals (RFP): A written solicitation document issued by MVBCN requesting competitive proposals to be used as the basis in making an acquisition or entering into a contract when criteria other than specification and pricing may be the predominant factor for award recommendation.

Request for Qualifications (RFQ): A written document issued by MVBCN to which potential consultants respond in writing by describing their experience with and qualifications for services or personal services described in the document.

Requirements Contract: A contract in which the supplier agrees to supply all of MVBCN's requirements that arise for an item or items within a specified time period.

Requisition: An internal document that details goods and/or services desired by the initiator and allows for encumbering of funds for the stated purpose.

Resident Bidder/Offeror: A Bidder/Offeror who has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the offer whether the Bidder/Offeror is a Resident Bidder/Offeror under this paragraph.

Responsible: Meeting the standards set forth in Section 20-0500 and not debarred or disqualified by MVBCN under Section 20-0575.

Responsible Bidder or Responsible Proposer (as applicable): A person who meets the standards of responsibility set forth in ORS 279B.110 and these Rules.

Responsible Offeror: As the context requires, means a responsible bidder, responsible proposer or a person who has submitted an offer and meets the standards set forth in these Rules and has not been debarred or disqualified by MVBCN under Section 20-0575.

Responsive: Meeting the characteristics of substantial compliance in all material respects with applicable solicitation requirements.

Responsive Bid or Responsive Proposal (as applicable): An offer as defined in these Rules that substantially complies in all material respects with applicable solicitation requirements and procurement requirements.

Responsive Offer: As the context requires, a responsive bid, responsive proposal or other offer that substantially complies in all material respects with applicable solicitation requirements.

Retroactive Approval of a Public Contract: The action of the Board or Executive Director retroactively approving a contract that was not previously properly executed containing all the required approval signatures.

Scope: The extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the contract.

Service: Work performed to meet a demand.

Service Contract: A contract that calls primarily for the contractor's time and effort rather than for an end product.

Solicitation: (a) A request by MVBCN for the purpose of soliciting offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a request for quotes, or a similar document; or (b) The process of notifying prospective offerors that MVBCN requests such offers; or (c) The solicitation document itself. A solicitation and award process uses methods for procurement of all goods and services identified in these Rules in Sections 10 through 20.

Solicitation Document: An Invitation to Bid or Request for Proposal or other document issued to invite offers from prospective offerors pursuant to ORS Chapter 279B. The solicitation document includes related documents attached or incorporated by reference, and any changes thereto, issued by MVBCN to establish an original contract that forms the basis for MVBCN's participation in a procurement. The following are not solicitation documents: Request for Qualifications, a prequalification of bidders, and a request for product prequalification.

Special Procurement: A class special procurement, a contract-specific special procurement, or both, as authorized by these Rules.

Specification: The description of the physical or functional characteristics of the item or service being solicited, including any requirement for inspecting, testing or preparing a supply or service item for delivery and the quantities or qualities of materials to be furnished under a contract.

State Price Agreement (SPA): A state agreement for materials or services that allows other public agencies to utilize the contract, thereby obtaining volume pricing.

Supplies and Services: Collectively means goods and personal services, separately or in any combination of these terms thereof as appropriate within the context of these Rules. Supplies and services includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B.

Surplus Property: All personal property and titled equipment owned by MVBCN and no longer being used for conducting MVBCN's business.

Work: The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire contract and the carrying out and completion of all duties and obligations imposed by the contract.

Writing: Letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings.

Written: Exists in writing.

10-0120 Policy

MVBCN shall conduct public contracting as set forth by state statute, these Rules or as authorized by the MVBCN Board of Directors.

10-0130 Application of Code / Model Rules

The Oregon Attorney General's Model Rules adopted by the Oregon Department of Justice pursuant to ORS 279A.065 shall not apply to MVBCN unless specifically referenced in these Rules.

10-0170 Delegation of Authority

- (1) This Rule clarifies responsibilities and implements the Code.
- (2) The Board may delegate its authority to enter into certain contract(s) as follows:
 - a. The Executive Director may authorize contracts and agreements, intergovernmental agreements, memoranda of understanding, grants, grant applications and proposals, reciprocal services, capital purchase agreements, and/or classroom/training opportunities that involve the receipt, expense, or appropriation of \$25,000 or less during the term of the contract. The Executive Director may also authorize contracts that obligate or commit

MVBCN to a particular lawful activity, course of action, or behavior but do not involve the receipt, expense, or appropriation of funds.

- i. The Executive Director shall regularly report all authorized contracts to the Board.
 - b. If a contract involves the receipt, expense, or appropriation of more \$25,000 during the term of the contract, then the contract shall be authorized by the Board of Directors unless specifically delegated or exempted by Board action.
- (3) Only those persons authorized to do so, pursuant to these Rules, may enter into a binding agreement or contract, including a purchase order, for the purchase or sale of goods or services on the part of MVBCN.
- a. The Executive Director may sub-delegate the authority to enter into purchase orders to MVBCN staff.

10-0200 Minorities, Women and Emerging Small Businesses

MVBCN may limit competition on public contracts for goods and services with an estimated cost of \$5,000 or less to carry out affirmative action policies as set forth in ORS 279A.105 and as defined in OAR 137-046-0120.

10-0300 Preference for Oregon Supplies and Services; Non-resident Bidders

When offers are identical in price, fitness, availability and quality, MVBCN shall award the contract based on the Attorney General's Model Rules, OAR 137-046-0300, Preference for Oregon Goods and Services.

10-0310 Reciprocal Preferences

When evaluating bids pursuant to ORS 279A.120, MVBCN shall add a percentage increase to the bid of a non-resident bidder equal to the percentage, if any, of the preference that would be given to that bidder in the state in which the bidder resides.

10-0320 Preference for Recycled Materials

- (1) Notwithstanding provisions of law requiring MVBCN to award a public contract to the lowest responsible bidder or best proposer or provider of a quotation, and in accordance with subsection (2) of this section, MVBCN may give preference to the procurement of goods manufactured from recycled materials.
- (2) In comparing goods from two or more offerors, if at least one offer provides goods manufactured from recycled materials, and at least one offer does not, MVBCN may select the offer of goods manufactured from recycled materials if each of the following four conditions exists:
 - a. The recycled product is available;
 - b. The recycled product meets applicable specifications;
 - c. The recycled product can be substituted for a comparable non-recycled product; and
 - d. The recycled product's costs do not exceed the costs of non-recycled products by more than five (5) percent or a higher percentage if a written determination is approved by the Board of Director and set forth in the solicitation document.

10-0335 Personal Services Contracts Authority and Standards for Personal Services Contracts

- (1) The following are Personal Service Contracts:
 - a. Contracts for services performed as an independent contractor in a professional capacity, including, but not limited to, the services of an accountant, attorney, physician or dentist, data processing consultant, or broadcaster.
 - b. Contracts for services as an artist in the performing or fine arts, including, but not limited to, persons identified as photographer, filmmaker, painter, weaver or sculptor.

- c. Contracts for services of a specialized, creative and research-oriented, non-commercial nature.
 - d. Contracts for services as a consultant.
 - e. Contracts for educational and human custodial care services.
- (2) Procedures for Personal Services Contracts
- a. For all Personal Services Contracts, MVBCN shall select from the seven methods available pursuant to ORS 279B.055 through 279B.085, and follow the screening, selection, evaluation and award procedures set forth for the selected sourcing method in Section 20 of these Rules.
 - b. Personal Services Contracts in an amount not to exceed \$75,000 may be awarded as a small procurement without a competitive solicitation process.
 - c. Procedures for amendments and reinstatements to Personal Services Contracts are found in Sections 10-0560 and 10-0570 respectively.
- (3) In the event of uncertainty or disagreement as to the status of a particular contract or class of contracts, the Executive Director or designee may determine whether the scope of work calls for the performance of Personal Services.
- (4) MVBCN may contract for Personal Services with Persons who are independent contractors. An independent contractor is a person who provides services to MVBCN and MVBCN does not control nor has the right to control the means by or manner in which the work is performed.
- (5) When MVBCN is contemplating contracting for work performed by Marion County employees represented by a labor organization, MVBCN must review the relevant collective bargaining agreement to ensure the contract complies with the provisions, and if applicable, the requirements of ORS 279A.140. MVBCN shall contact Marion County Business Services Human Resources for procedures regarding contracting out services performed by County employees.

10-0360 Federal Procurement Programs

- (1) MVBCN may purchase certain authorized goods and services through General Service Administration (GSA) federal programs or federal contracts without competitive sealed bidding, competitive sealed proposals or other competitive processes required under ORS 279B.050 to 279B.085, provided that MVBCN has federal authorization to purchase through the federal program and follows the procedures set forth in OAR 125-246-0360(3).
- (2) MVBCN may enter into public contracts under a federal program described in ORS 279A.180 without following procedures set for in ORS 279B.050 through 279B.085.
- a. The procurement is made under 10 USC 381, the Electronic Government Act of 2002 (PL 107-347) or other federal law that the Board determines to be similar.

10-0400 Cooperative Procurements

- (1) **Purpose.** MVBCN may use one of the three cooperative procurement methods: joint cooperative procurements, permissive cooperative procurements and interstate cooperative procurements. An administering authorized agency's original contract or a participating authorized agency's contract with a provider in a cooperative procurement is subject to ORS 279A and these Rules, unlike agreements solely between governmental agencies pursuant to ORS 190 *et seq.* and excepted from the code pursuant to ORS 279A.025.
- (2) **Definitions.** The following definitions apply to cooperative procurement:
- a. **Administering Authorized Agency:** The state procurement office; another governmental body, domestic or foreign, approved by state procurement office; or an authorized agency with delegated authority pursuant to OAR 125-246-0170, that solicits and establishes the original contract for procurement of supplies and services or public improvements in a cooperative procurement.
 - b. **Contract:** For purposes of these cooperative procurement rules means a public contract or price agreement arising from an original contract that was solicited and awarded during a cooperative procurement by an administering authorized agency.

- c. Cooperative Procurement: A procurement conducted by the state procurement office or an authorized agency or on behalf of one or more agencies. Cooperative procurement includes but is not limited to multiparty contracts and price agreements.
- d. Cooperative Procurement Group: A group of authorized agencies or another governmental body, domestic or foreign, approved by state procurement office, joined through an intergovernmental agreement pursuant to ORS 190 for the purposes of facilitating a cooperative procurement pursuant to ORS 279A.200.
- e. Interstate Cooperative Procurement: A permissive cooperative procurement in which the administering authorized agency is a governmental body, domestic or foreign, approved by the state procurement office, that is authorized under that governmental body's laws, rules, or regulations to enter into public contracts and in which one or more of the participating authorized agencies are located outside of the state of Oregon.
- f. Joint Cooperative Procurement: A cooperative procurement that identifies:
 - i. The participating authorized agencies or the cooperative procurement group; and
 - ii. The contract requirements or estimated contract requirements for the original contract.
- g. Material Change or Material Alteration: An alteration in a public contract or solicitation that is different in effect from the original meaning or scope. This includes changes in quality, price or type of supplies and services or public improvements.
- h. Original Contract: The initial contract or price agreement as solicited and awarded during a cooperative procurement by an administering authorized agency.
- i. Participating Authorized Agency or Purchasing Authorized Agency: The State Procurement Office; another governmental body, domestic or foreign, approved by State Procurement Office; or an authorized agency having delegated authority pursuant to OAR 125-246-0170, which procures supplies and services or public improvements from a provider based on an original contract established by an administering authorized agency in a cooperative procurement.
- j. Permissive Cooperative Procurement: A cooperative procurement in which the participating authorized agencies are not identified.

10-0420 Joint Cooperative Procurements

MVBCN may choose to participate in, sponsor, conduct or administer a joint cooperative procurement only in accordance with ORS 279A.210.

10-0430 Permissive Cooperative Procurements

MVBCN may choose to participate in, sponsor, conduct or administer a permissive cooperative procurement only in accordance with ORS 279A.215.

10-0440 Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement

- (1) When MVBCN wishes to enter into a contract or price agreement arising out of a permissive cooperative procurement, it shall publish notice of its intent to do so if MVBCN estimates that it will spend in excess of \$250,000 on goods and services or Personal Services acquired under the contract or price agreement.
- (2) The notice of intent required by Section 10-0440 (1) shall contain the information required by ORS 279A.215(2)(b) and shall be advertised in the same manner as provided in ORS 279B.055(4)(b) and (c). MVBCN shall give the notice required by this section no fewer than seven (7) days before the deadline for submitting comments regarding MVBCN's intent to establish a contract through a permissive cooperative procurement.

10-0450 Interstate Cooperative Procurements

MVBCN may choose to participate in, sponsor, conduct or administer an interstate cooperative procurement only in accordance with ORS 279A.220.

10-0460 Advertisement of Interstate Cooperative Procurements

MVBCN may participate in an interstate cooperative procurement only if at least one of the following occurs:

- (1) The solicitation document lists MVBCN or the cooperative procurement group of which MVBCN is a member as a party that may enter into contracts under the terms and conditions of the original contract, and the solicitation document is advertised in Oregon in compliance with ORS 279B.055(4) .
- (2) If the solicitation document was not advertised in accordance with subsection (1) of this section, MVBCN gives notice of its intent to enter into a public contract or price agreement based on the terms of the interstate cooperative procurement. The notice of intent shall contain the information required by ORS 279A.220(2)(b) and MVBCN shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). This notice shall be given no fewer than seven (7) days before the deadline for submitting comments regarding MVBCN's intent to establish a contract or price agreement through an interstate cooperative procurement.

10-0470 Protests and Disputes

An offeror or potential offeror wishing to protest the procurement process, the contents of a solicitation document related to a cooperative procurement or the award or proposed award of an original contract, shall make the protest in accordance with Section 20-0740. If MVBCN is not the administering contracting agency, then a protest or dispute must be made through the administering contracting agency that issued the original solicitation.

10-0480 Contract Amendment Authority

MVBCN may amend a contract entered into pursuant to a cooperative procurement as set forth in these Rules.

CONTRACT ADMINISTRATION

10-0550 General Definitions

- (1) **Contract Administration:** All functions related to a given contract between MVBCN and a contractor from the time the contract is awarded until the work is completed and accepted or the contract is terminated, payment has been made and disputes have been resolved.
- (2) **Contract Terms and Conditions:** The entire contract document including but not limited to, the contract, a solicitation document incorporated by reference in the contract, and all attachments, exhibits or other requirements specifically referenced in the contract.
- (3) **Contract Signature:** For purposes of these Rules, Contract Signature shall mean a scanned or facsimile signature when executing final Contract Documents and subsequent contract and amending activities in lieu of an original ink signature. MVBCN may accept Contract Signatures to execute final contracting documents when:
 - a. Contracting activities comply with all statutory requirements and these Rules.
 - b. MVBCN demonstrates evidence that the Contract Signature in fact indicates the person's intent to be bound to the specifically identified contract document. MVBCN may meet this requirement by: (i) requiring receipt of the entire contract document with signature page or (ii) requiring signature page only when accompanied by a signed statement acknowledging receipt of contract in question between contractor and MVBCN and statement that

Contractor signed the printed form of the Contract without change from the electronically transmitted document.

10-0556 Procurement File

MVBCN is responsible for maintaining the procurement file for each procurement made by MVBCN. The file must at a minimum, include a solicitation document, contract, amendments thereto, work order, documentation of communications between MVBCN and offeror or contract administration file, separately or collectively.

10-0560 Amendments

(1) Definitions

- a. Amendment: A written modification to a contract or agreement, other than by changes to the work pursuant to Section 20-0800, that is reasonably related to the scope of the original procurement and requires the mutual agreement between MVBCN and the contractor.
- b. Anticipated Amendment: When MVBCN has stated in writing in any solicitation document and the original contract that MVBCN may amend the contract.
- c. Unanticipated Amendment: An amendment that is not described in any solicitation document and/or the original contract.

- (2) MVBCN may make one or more amendments to a contract without any additional competitive process as long as the work is reasonably related to the original solicitation document or original contract.
- (3) Amendments under this section may not increase the contract beyond the limit of any threshold established in these sections, unless expressly stated in Section 20 of these Rules.
- (4) All amendments must be signed by the authorized representatives of the parties to the contract and must receive all required approvals before the amendment shall be binding on MVBCN.

10-0570 Reinstatement of Expired Contracts

- (1) MVBCN may approve reinstatement of an expired contract upon submission of a concise written statement justifying that:
 - a. The failure to extend or renew the contract in a timely manner was due to unforeseen or unavoidable conditions;
 - b. The written request for reinstatement is presented within ninety (90) days after the expiration of the original contract; and
 - c. The contractor's completion of the work after the expiration of the contract, affirming that there is no change in the statement of work, and either:
 - i. The reinstatement is exclusively for the purpose of permitting completion of the work or additional services for no additional compensation; or
 - ii. When the services are of a continuing or repetitive nature that are compensated at an hourly, daily or similar periodic rate, the reinstatement either:
 - A. Does not increase the rate of compensation; or
 - B. Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Consumer Price Index (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.
- (2) When a contract is reinstated pursuant to this section, MVBCN may compensate the contractor, at the rate of compensation established in the original contract, for work performed in the interim between the expiration of the original contract and the execution and approval(s) of the extension or amendment.
- (3) Only one reinstatement of a contract may be allowed.

- (4) If the reinstatement of a contract pursuant to this rule raises the aggregate amount of compensation to a level that requires Board approval, MVBCN must obtain Board approval before the extension becomes binding and before any services may be performed under the reinstated contract.
- (5) Once a contract is reinstated, it is in full force and effect, as if it had not expired.

10-0580 Retroactive Approvals

- (1) This section applies to contracts that must have the approval of the Board pursuant to these Rules.
- (2) Before the Board may consider retroactive approval of a contract, the MVBCN Executive Director must submit a copy of the contract to be reviewed and a written request for contract retroactive approval consideration containing an explanation of why the contract was not submitted before performance began, a description of the steps being taken to prevent similar occurrences in the future, and a proposed retroactive approval of the contract.

10-0590 Contract Term

- (1) The term of a Personal Services Contract shall be a maximum of ten (10) years unless otherwise specified in state or federal program regulations, in the solicitation document, or the Board specifically waives the ten-year limitation.
- (2) The term of a public contract shall be a maximum of five (5) years, unless otherwise specified in the ITB or other solicitation document for the project or as otherwise provided in these rules. This rule shall not apply to contracts or agreements regarding real property.

10-0600 Ethics Policy

- (1) These rules supplement and do not replace ORS 244.010 through ORS 244.400, for the purpose of applying the policy of ORS 244.010 to public contracting under the Code and these Rules.
- (2) Any MVBCN officer, employee or agent is prohibited from using his or her official position for personal advancement, financial gain, or for the financial gain of family members.
- (3) An MVBCN officer, employee or agent may not commit MVBCN to any provision of services or expenditure of funds for any purpose unless it has been authorized in the budget or by approval of the Board. Any MVBCN officer, employee, or agent who makes an unauthorized commitment of MVBCN services or funds may be held personally responsible for paying for those expenditures.

10-0630 Fragmentations

A procurement may not be artificially divided or fragmented so as to make it several small procurements pursuant to ORS 279B.065 or intermediate procurements pursuant to ORS 279B.070. The cumulative total of the original contract amount, all amendments, and renewals shall not exceed 125% of the maximum amount allowed by ORS 279B.065 or ORS 279B.070, if the original procurement was a small or intermediate procurement.

10-0635 MVBCN Communication with Providers

- (1) **Research Phase.** Prior to the release of a solicitation, MVBCN encourages research with providers who can meet MVBCN's needs. This research includes but is not limited to: meetings, industry presentations, and demonstrations with any providers that, in MVBCN's discretion, may be able to meet MVBCN's needs. MVBCN must document the items discussed during the research phase of solicitation development. The research phase ends the day of a solicitation release or request for a quote according to an intermediate procurement, unless the solicitation or intermediate procurement provides for a different process that permits on-going research.
- (2) **Solicitation and Contracting Phase.** Any communication between MVBCN and providers regarding a solicitation that occurs after the solicitation release or request for a quote and before

the award of a contract must be made only within the context of the solicitation document or intermediate procurement requirements (communication). This communication may allow for discussions, negotiations, addenda, providers' questions, and MVBCN's answers to providers' questions about terms and conditions, specifications, amendments, or related matters. During this phase, telephone conversations and meetings must be documented in the procurement file. Written inquiries regarding the solicitation should be responded to by MVBCN in writing. A record of all material communications regarding the solicitation by interested providers must be made a part of the procurement file according to Section 10-0556.

Section 20 Public Procurements for Goods or Services

20-0100 General Provisions

These Rules implement ORS Chapter 279B, Public Procurements, and apply to the procurement of Goods or Services. In accordance with Section 10-0335(3)(b), Contracts for Personal Services that do not exceed \$75,000 may be awarded according to the procedures for small procurements.

20-0110 Feasibility Determination / Cost Analysis and MVBCN Report

(1) Application.

- a. This Rule does not apply to the procurement of services that MVBCN estimates will have a value less than \$250,000 for the entire term of the contract, including incidental costs related to the services, and anticipated amendments.
- b. This Rule applies to a procurement for services that MVBCN estimates will result in one or more contracts with a value of more than \$250,000 for the estimated term of the contract(s), including incidental costs related to the services, and anticipated amendments, but not unanticipated amendments. MVBCN must not fragment to avoid this threshold (see Section 10-0630: Fragmentations).
- c. If a procurement is conducted in accordance with this Rule, an award is made, and one or more unanticipated amendments then increase the estimated contract's value more than \$250,000, a feasibility determination or cost analysis is not required at that time.
- d. "Services" has the meaning as defined in Section 10-0110.
- e. This Rule applies to all solicitations released and contracts awarded on or after September 11, 2014.

(2) Generally.

- a. Before conducting a procurement for Services, MVBCN must make a determination pursuant to these Rules.
- b. If it is determined that this Rule does not apply pursuant to Section (1)(a) above, then MVBCN may proceed with the procurement of Services and will document that the Rule does not apply.
- c. All written exemptions, feasibility determinations, and cost analysis required by this Rule must be made a part of MVBCN's procurement file and will become a public record subject to the Oregon public records laws.

(3) Exemptions.

- a. A procurement for Services estimated to be more than \$250,000 will be exempt from this Rule if the contract is:
 - i. Exempt from competitive process under ORS 279A.025.
 - ii. A contract for Personal Services as defined in Section 10-0335.
- b. MVBCN shall document the exemption and submit for review and authorization by the Contracts Officer prior to moving forward with the procurement of Services.

(4) Feasibility Determination.

- a. If the procurement of Services exceeds \$250,000 and is not an exempt category as defined in Subsection (3) of this Rule, MVBCN may proceed with the procurement of services only after making a written determination that one or more special circumstances make MVBCN's use of its own personnel and resources to provide the services not feasible (Feasibility Determination).
 - i. Special Circumstances. Special circumstances include any circumstances, conditions or occurrences that would make the services, if performed by MVBCN's employees, incapable of being managed, utilized or dealt with successfully in terms of the quality, timeliness of completion, success in obtaining desired results, or other reasonable needs of MVBCN. Special circumstances may include, but are not limited to, the following circumstances:

A. Expertise. MVBCN lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the services. In making the finding, MVBCN must compare MVBCN's capability, experience or expertise in the field most closely involved in performing the services with a potential contractor's capability, experience or expertise in the same or a similar field.

B. Funding Requirement. The terms under which MVBCN receives a grant or other funds for use in a procurement require MVBCN to obtain services through an independent contractor.

C. Law Requirement. Other state or federal laws require MVBCN to procure services through an independent contractor.

D. Real or Personal Property. The procurement is for services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented.

E. Conflict of Interest; Unbiased Review. MVBCN cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using MVBCN's existing personnel or persons MVBCN could hire through a regular or ordinary recruitment process would not be suitable.

F. Emergency Procurement. The procurement is for services to which the provisions of ORS 279B.080 apply.

G. Delay. The procurement is for services, the need for which is so urgent, temporary or occasional that attempting to perform the services with MVBCN's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the services.

H. Services Completed within Six Months. The services that MVBCN intends to procure will be completed within six months after the date on which the contract for the services is executed.

b. Authorization of Written Feasibility Determination. Once MVBCN makes a determination that it is not feasible to perform the required services in-house, MVBCN shall submit the determination to the Contracts Officer for review and approval prior to moving forward with the procurement of Services.

c. Procurement File. All written feasibility determinations required in Section (3) must be made a part of MVBCN's procurement file.

(5) **Cost Analysis: Estimation of MVBCN and Contractor Data.**

a. This Rule applies to any procurement of Services that exceed \$250,000 that have been determined to be feasible for MVBCN to perform the services in-house. If this Rule applies, then MVBCN must complete a cost analysis.

b. Costs of Using MVBCN's Own Personnel and Resources. MVBCN must estimate its cost of performing the services and consider cost factors that include:

i. Salaries or Wages and Benefits. The salary or wage and benefit costs for the employees of MVBCN who would be directly involved in performing the services, to the extent those costs reflect the proportion of the activity of those employees in the direct provision of the services. These costs include those salary or wage and benefit costs of the employees who inspect, supervise or monitor the performance of the services, to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision or monitoring of the performance of the services.

ii. Material Costs. The material costs necessary to the performance of the services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the services.

iii. Related Costs.

A. Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the services.

- B. Any costs related to stopping and dismantling a project or operation because MVBCN intends to procure a limited quantity of services or to procure the services within a defined or limited period of time.
- C. The miscellaneous costs related to performing the services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this Subsection (5)(b) over the expected duration of the procurement. These costs exclude MVBCN's indirect overhead costs for existing salaries or wages and benefits for administrators and exclude costs for rent, equipment, utilities and materials, except to the extent the cost items identified in this sentence are attributed solely to performing the services and would not be incurred unless MVBCN performed the services.
- iv. Other Information. MVBCN's costs described in this Subsection (5)(b) do not constitute an exclusive list of cost information. MVBCN may consider other reliable information that bears on the cost to MVBCN of performing the services. For example, if MVBCN has accounted for its actual costs of performing the services under consideration, or reasonably comparable services, in a relatively recent services project, MVBCN may consider those actual costs in making its estimate.
- c. Costs a Potential Contractor Would Incur. MVBCN must estimate the cost a potential contractor would incur in performing the services and consider cost factors that include:
 - i. Salaries or Wages and Benefits. The estimated salary or wage and benefit costs for a potential contractor and potential contractor's employees who work in the business or industry most closely involved in performing the services; and who would be necessary and directly involved in performing the services or who would inspect, supervise, or monitor the performance of the services.
 - A. MVBCN may, but is not required to, communicate with any actual contractor for information related to this estimate (see Section 10-0635).
 - B. MVBCN may consider in making this estimate any public source of information, including but not limited to:
 - 1. Other contracts of MVBCN for reasonably comparable services;
 - 2. Trade or other marketplace websites;
 - 3. Industry or professional associations and publications;
 - 4. The Oregon Bureau of Labor and Industries or an agency of another jurisdiction that performs comparable functions; and
 - 5. A survey of persons who provide reasonably comparable services by means including but not limited to Internet or telephone searches.
 - ii. Material Costs. The material costs necessary to the performance of the services, including the costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies used or consumed in the provision of the services.
 - iii. Related Costs. The miscellaneous costs related to performing the services. These miscellaneous costs include but are not limited to reasonably foreseeable fluctuations in the costs listed in Subsections (5)(c)(A) through (C) over the expected duration of the procurement.
 - iv. Other Information. The potential contractor's costs described in Subsection (5)(c) do not constitute an exclusive list of cost information. MVBCN may consider other reliable information that bears on the costs a potential contractor would incur. For example, if in the recent past, MVBCN conducted a solicitation that required cost information or permitted negotiation of price based on a cost analysis for services reasonably comparable to the current services, MVBCN may use that cost information in estimating the costs of current services.

(6) Decision: Comparison of Compensation and Other Costs.

- a. MVBCN must compare:
 - i. MVBCN's estimated costs under Subsection (5)(b) and
 - ii. The contractor's estimated costs under Subsection (5)(c).

- b. Decision. If MVBCN's costs exceed the contractor's costs under Subsection (6)(a) for the sole reason that the contractor's costs for salaries or wages and benefits under Subsection (5)(c)(A) are lower than MVBCN's costs for salaries or wages and benefits under Subsection (5)(b)(A), then MVBCN may not conduct the procurement.
- c. This determination must be documented and submitted to the Contracts Officer or designee for review and approval.

(7) **Decision: Comparison of MVBCN and Contracting Costs.**

- a. If Subsection (6)(b) does not apply, MVBCN must compare:
 - i. MVBCN's estimated costs under Subsection (5)(b) and
 - ii. The total estimated costs that MVBCN would incur in procuring the Services from a contractor (contracting costs)
- b. Profit Included. Contracting costs include MVBCN's estimate of contractor's profit in addition to the estimate of contractor's costs under Subsection (5)(c). If MVBCN, in the reasonably near past, received bids or proposals for the performance of the services under consideration, or reasonably comparable services, MVBCN may consider the pricing offered in those bids or proposals in making its estimate. Similarly, MVBCN may consider what it actually paid under a contract for the same or similar services. For the purposes of these examples, the reasonably near past is limited to contracts, bids or proposals entered into or received within the five (5) years preceding the date of the cost estimate. MVBCN must take into account, when considering the pricing offered in previous bids, proposals, or contracts, adjustments to the pricing in light of measures of market price adjustments that apply to the services, such as the consumer price indexes.
- c. Decision.
 - i. If MVBCN's estimated contracting cost under this Section is lower than MVBCN's cost under Subsection (5)(b), then MVBCN may conduct the procurement. If MVBCN's contracting cost is higher than MVBCN's cost under Subsection (5)(b), MVBCN may not conduct the procurement, unless the exception of Subsection (7)(d) applies.
 - ii. This determination must be documented and submitted to the Contracts Officer or designee for review and approval.
- d. Exception Based on Lack of MVBCN Personnel and Resources; Reporting. If MVBCN determines that it must provide the services in-house through the cost comparison analysis, MVBCN may still conduct the procurement if MVBCN determines that it lacks personnel and resources to perform the services within the time MVBCN requires the services (exception). Before MVBCN conducts a procurement under this exception, MVBCN must first:
 - i. Make and document the exception determination that it lacks personnel and resources to perform the services within the time MVBCN requires the services. The documentation must include the basis for MVBCN's decision to conduct the procurement; and
 - ii. Send the documentation of the exception to the Contracts Officer or designee before conducting a procurement.
- e. Reporting.
 - i. The MVBCN Executive Director, each calendar quarter, will provide a report of each cost analysis, exception, and any other records described in this Subsection (7)(d) to the MVBCN Contract Review Board.
 - ii. MVBCN will cooperate with the State of Oregon Department of Administrative Services to provide any MVBCN documentation regarding this Rule upon request to do so.

20-0200 Buy Decision

- (1) **Buy Decision.** The Buy Decision means the decision to buy Supplies and Services through socio-economic programs, agreements, or the open market (Source) regardless of the dollar amount.

- (2) **Priority.** MVBCN must make the Buy Decision in the priority order set forth in Subsections (a) through (d) (Priority). If a higher Priority source satisfies a Procurement, MVBCN must procure through that higher Priority Source and may not elect to procure through a lower Priority Source.
 - a. Surplus Property. Procuring from surplus property promotes the efficient use of existing resources.
 - b. Qualified Rehabilitation Facilities (QRFs). Assists individuals with disabilities through gainful employment (see ORS 279.835 through 279.855 and Section 50-0300 QRF's).
 - c. Oregon Department of Administrative Services Price Agreement (ORCPP) or other cooperative solicitations. Promotes economy and efficiency through volume and strategic purchases.
 - d. ORS 190 Agreement. Section (2) does not apply to ORS 190 Agreements that promote the use of existing state and local resources, including Interagency Agreement, Intergovernmental Agreement, Interstate Agreement, International Agreement or Tribal Agreement. MVBCN may elect to use an ORS 190 Agreement at any time.
- (3) **Open Market.** If Section (2) does not apply, MVBCN may procure Supplies and Services through the open market, using the methods provided under the Public Contracting Code, these Rules and policies.

20-0250 Methods of Source Selection

MVBCN shall award a public contract for supplies and services and Personal Services by one of the seven sourcing methods as follows:

- (1) Competitive sealed bidding pursuant to ORS 279B.055;
- (2) Competitive sealed proposals pursuant to ORS 279B.060;
- (3) Small procurements pursuant to ORS 279B.065;
- (4) Intermediate procurements pursuant to ORS 279B.070;
- (5) Sole source procurements pursuant to ORS 297B.075;
- (6) Emergency procurements pursuant to ORS 279B.080; and
- (7) Special procurements pursuant to ORS 279B.085 and related rules.

20-0255 Competitive Sealed Bidding; One Step Solicitations

- (1) **Generally.** An invitation to bid (ITB) shall be used to initiate a competitive sealed bidding solicitation for procurements more than \$150,000 and must contain information required by ORS 279B.055(2) and by subsection (2) of this rule. MVBCN shall provide public notice of the solicitation as set forth in Section 20-0255 (4).
- (2) **ITB Provisions.** In addition to the provisions required by ORS 279B.055(2), the ITB shall include the following:
 - a. General information.
 - i. Notice of any pre-offer conference as follows:
 - A. The time, date and location of any pre-offer conference;
 - B. Whether attendance at the conference will be mandatory or voluntary; and
 - C. A provision that provides that statements made by MVBCN's representatives at the conference are not binding upon MVBCN unless confirmed by written addendum.
 - ii. The form and instructions for submission of bids and any other special information, e.g., whether bids may be submitted by electronic means as defined by these Rules.
 - iii. The time, date and place of opening of bids;
 - iv. The office where the solicitation document may be reviewed or obtained;
 - v. A statement that each bidder must identify whether the bidder is a "resident bidder" as defined in ORS 279A.120(1);
 - vi. Bidder's certification of non-discrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);
 - vii. How MVBCN will notify bidders of addenda and how MVBCN will make addenda available;

- viii. The anticipated solicitation schedule, deadlines, protest process and evaluation process;
 - ix. If MVBCN intends to award contracts to more than one bidder pursuant to Section 20-0600 of these Rules, MVBCN shall identify in the solicitation document the manner in which it will determine the number of contracts it will award; and
 - x. All contractual terms and conditions in the form of contract provisions MVBCN determines are applicable to the procurement. As required by Oregon Laws 2009 Chapter 880, Section 5, the contract terms and conditions must specify the consequences of the contractor's failure to perform the scope of work or to meet the performance standards established by the resulting contract. Those consequences may include, but are not limited to:
 - A. MVBCN's reduction or withholding of payment under the contract;
 - B. MVBCN's right to require the contractor to perform, at the contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting contract; and
 - C. MVBCN's rights, which MVBCN may assert individually or in combination, to declare a default of the resulting contract, to terminate the resulting contract, and to seek damages and other relief available under the resulting contract or applicable law.
 - b. MVBCN's Need to Purchase. The character of the goods or services MVBCN is purchasing, including, if applicable, a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements. As required by Oregon Laws 2009, Chapter 880, Section, 5, MVBCN's description of its need to purchase must:
 - i. Identify the scope of work to be performed under the resulting contract, if MVBCN awards one;
 - ii. Outline the anticipated duties of the contractor under any resulting contract;
 - iii. Establish the expectations for the contractor's performance of any resulting contract; and
 - iv. Unless MVBCN for good cause specifies otherwise, the scope of work must require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that MVBCN is purchasing.
- (3) **Good Cause.** For the purposes of this Rule, good cause means a reasonable explanation for not requiring a contractor to meet the highest standards and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of MVBCN. MVBCN shall document in the procurement file the basis for the determination of good cause for specification otherwise. MVBCN will have good cause to specify otherwise under the following circumstances:
- a. The use or purpose to which the goods or services will be put does not justify a requirement that the contractor meet the highest prevalent standards in performing the contract;
 - b. Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the goods or services will be compatible with or will operate efficiently or effectively with components, equipment, parts, services or information technology including hardware, services or software with which the goods or services will be used, integrated, or coordinated;
 - c. The circumstances of the industry or business that provides the goods or services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
 - d. Any other circumstances in which MVBCN's interest in achieving economy, efficiency, compatibility or availability in the procurement of goods or services reasonably outweighs MVBCN's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the goods or services to be delivered under the resulting contract.
- (4) **Bid Security.** All ITB offers for a public contract shall be accompanied by a surety bond, cashier's check, certified check, or irrevocable letter of credit by an insured institution, as defined in ORS

706.008, of the bidder in the amount of 10% of the bid unless the contract for which the bid was submitted has been exempted from this requirement as set forth in these rules.

- a. MVBCN shall return the bid security to all bidders upon the execution of the contract.
- b. MVBCN shall retain bid security if a bidder who is awarded a contract fails to promptly and properly execute the contract.

(5) **Public Notice.** MVBCN shall give public notice of an ITB issued under this section.

- a. Public notice must be published in at least one newspaper of general circulation in the area where the contract is to be performed.
- b. Public notice may be provided electronically, when authorized, through the MVBCN website;
- c. Unless otherwise specified, MVBCN shall give public notice at least seven (7) days before the solicitation closing date.

(6) **Public Bid Opening and Disclosure.**

- a. The bids shall be opened and read publicly at the time, date, and place designated in the ITB. When authorized by and in accordance with procedures established by MVBCN and consistent with ORS 279A.065, bids may be submitted, received and opened through electronic means.
- b. The amount of a bid, the name of the bidder and other relevant information shall be recorded by MVBCN and record shall be open to public inspection.
- c. MVBCN may withhold from disclosure to the public trade secrets, as defined in ORS 192.345, and information submitted to a public body in confidence, as described in ORS 192.355, that are contained in the bid.

(7) **Bid Award.** The decision of the Board of Directors or the Executive Director to award the contract shall constitute the final decision of MVBCN to award the bid.

20-0257 Multi-step Sealed Bids

(1) **Generally.** MVBCN may procure goods or services by using multi-step competitive sealed bids pursuant to ORS 279B.055.

(2) **Phased Process.** Multi-step bidding is a phased process that seeks necessary information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting bidders who submitted technically eligible unpriced submittals in the first phase to submit competitive sealed price bids in the second phase. Phase one may include multiple steps at the discretion of MVBCN in order to obtain necessary information or unpriced submittals to determine the eligibility of the bidders to submit priced bids. After this determination, MVBCN may begin phase two by issuing subsequent ITB, limited to those bidders eligible to submit priced bids. The contract shall be awarded to the lowest responsible bidder or to multiple responsible bidders in accordance with ORS 279B.055(10). If time is a factor, bidders may submit a separate sealed price bid during the initial phase to be opened after the evaluation of unpriced submittals. MVBCN shall comply with the following procedures for this type of solicitation:

(3) **Public Notice.** Whenever a multi-step ITB is used, public notice for phase one must be given in accordance with Section 20-0255 (5). Public notice is not required for subsequent steps in phase one, unless a step in phase one expands the number of bidders, and then public notice is required. MVBCN shall give notice of subsequent phases to all bidders, inform bidders of the right to protest addenda issued after initial closing pursuant to Section 20-0255 (5) and inform bidders excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 20-0720.

(4) **Procedures Generally.** In addition to the procedures set forth in these rules, MVBCN shall employ the procedures set forth in this section for multi-step bidding:

- a. Solicitation protest. Prior to the closing of phase one, MVBCN shall provide an opportunity to protest the solicitation under ORS 279B.405 and Section 20-0720 (2)
- b. Addenda protest. MVBCN may provide an opportunity to protest any addenda issued during phase two pursuant to Section 20-0720 (2).

- c. Exclusion protest. MVBCN may, but is not required to provide an opportunity for a bidder to protest exclusion from the second round of multi-step sealed bids as set forth in Section 20-0720.
- d. Administrative remedy. A bidder may submit a protest to any addenda or to any action by MVBCN that has the effect of excluding the bidder from the second phase of multi-step bidding to the extent such protests are provided for in the solicitation document or required by this section. Failure to so protest shall be considered the bidder's failure to pursue an administrative remedy made available to the bidder by MVBCN.
- e. Award protest. MVBCN shall provide an opportunity to protest its intent to award a contract pursuant to ORS 279B.410 and Section 20-0740. An affected bidder may protest, for any of the bases set forth in Section 20-0720 (2), its exclusion from the second phase of a multi-step sealed bid, or an addendum issued following initial closing, if MVBCN did not previously provide bidders the opportunity to protest the exclusion or addendum.

(5) Procedure for Phase One of Multi-step Sealed Bids.

- a. Form. Multi-step sealed bidding shall be initiated by the issuance of an Invitation to Bid in the form and manner required for competitive sealed bids. The multi-step ITB shall provide:
 - i. That the solicitation is a multi-step sealed Bid Procurement and describe the process that MVBCN will use to conduct the Procurement;
 - ii. That MVBCN requests unpriced submittals and that MVBCN will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;
 - iii. Whether price bids are to be submitted at the same time as unpriced technical bids; if they are, that the price bid shall be submitted in a separate sealed envelope;
 - iv. The criteria to be used in the evaluation of unpriced technical bids.
 - v. That MVBCN, to the extent that it finds necessary, may conduct oral or written discussions for the purposes of clarification of the unpriced technical bids;
 - vi. That unpriced technical bids shall be categorized as:
 - A. Eligible;
 - B. Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - C. Ineligible. MVBCN shall record in writing the basis for determining a bid ineligible and make it part of the procurement file.
 - vii. Whether bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to award. This information can be given or changed by addenda.
- b. Evaluation. MVBCN shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.
- c. Addenda to the ITB. After receipt of unpriced technical bids, addenda to the ITB shall be distributed only to bidders who submitted unpriced technical bids.
- d. Receipt and handling of unpriced technical bids. Unpriced technical bids need not be opened publicly.
- e. MVBCN may initiate phase two of the procedure if, in MVBCN's opinion, there are sufficient eligible unpriced technical bids to assure effective price competition in the second phase without technical discussions. If MVBCN finds that such is not the case, MVBCN may issue an addendum to the invitation to bid or engage in technical discussions as set forth in this section.
- f. Discussion of unpriced technical bids. MVBCN may seek clarification of a technical bid by an eligible or potentially eligible bidder. During the course of these discussions, MVBCN shall not disclose any information derived from one unpriced technical bid to any other bidder. Once discussions have begun, any bidder who has not been notified that its bid has been finally found ineligible may submit supplemental information amending its technical bid at any time until the closing of the final step established by MVBCN. Submissions may be made at the request of MVBCN or upon the bidder's own initiative.

- g. Notice of ineligible unpriced technical bid. When MVBCN determines a bidder's unpriced technical bid to be ineligible, that bidder shall not be afforded an additional opportunity to supplement its technical bids.
 - h. Mistakes during multi-step sealed bidding. Mistakes may be corrected or bids may be withdrawn during phase one:
 - i. Before unpriced technical bids are considered.
 - ii. After any discussions have commenced under subsection (5)(f).
 - iii. When responding to any addenda of the ITB; or
 - iv. In accordance with Chapter 20-0470.
 - i. Revisions to Solicitation Specifications. After closing of phase one, MVBCN may issue addenda that modify the specifications for the goods or services being procured or that modify other terms and conditions of the ITB. MVBCN shall provide all addenda to all offerors who initially submitted unpriced technical bids. MVBCN may then require offerors to submit revised unpriced technical bids.
- (6) **Procedure for Phase Two of Multi-Step Sealed Bids:**
- a. Initiation. Upon the completion of phase one MVBCN shall either:
 - i. Open price bids submitted in phase one (if price bids were required to be submitted) from bidders whose unpriced technical bids were found to be eligible; or
 - ii. If price bids have not been submitted, technical discussions have been held, or addenda to the invitation to bid have been issued, invite each eligible bidder to submit a price bid.
 - b. Conduct. Phase two shall be conducted as any other competitive sealed bid procurement except:
 - i. As specifically set forth in this section; and
 - ii. No public notice need be given of this invitation to submit price bids, because notice was previously given.

20-0260 Competitive Sealed Proposals

- (1) **Generally.** MVBCN may procure goods or services by competitive sealed proposals for procurements more than \$150,000 as set forth in ORS 279B.060. A request for proposals (RFP) shall be used to initiate a competitive sealed proposal solicitation and shall contain the information required by ORS 279B.060(2) and by subsection 2 of this section. MVBCN shall provide public notice of the competitive sealed proposal as set forth in Section 20-0300.
- (2) **Request for Proposals (RFP).** In addition to the provisions required by ORS 279B.060(2), the RFP shall include the following:
 - a. General information.
 - i. Notice of any pre-offer conference as follows:
 - a. The time, date and location of any pre-offer conference; and
 - b. Whether attendance at the conference is be mandatory or voluntary; and
 - c. A provision that provides that statements made by MVBCN's representatives at the conference are not binding upon MVBCN unless confirmed by a written addendum.
 - ii. The form and instructions for submission of proposals and any other special information (e.g., whether proposals may be submitted by electronic means. See Section 20-0330 for required provisions of electronic proposals.);
 - iii. The time, date and place of opening;
 - iv. The office where the solicitation document may be reviewed;
 - v. Proposer's certification of non-discrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and
 - vi. The means by which MVBCN shall notify proposers of addenda and by which MVBCN shall make addenda available. (See Section 20-0430).
 - b. MVBCN need to purchase. The character of the goods or services MVBCN is purchasing including, if applicable, a description of the acquisition, specifications, delivery or

performance schedule, inspection and acceptance requirements. As required ORS 279B.060(2)(c), MVBCN's description of its need to purchase must:

- i. Identify the scope of the work to be performed under the resulting contract, if MVBCN awards one;
 - ii. Outline the anticipated duties of the contractor under any resulting contract;
 - iii. Establish the expectations for the contractor's performance of any resulting contract; and
 - iv. Unless MVBCN for good cause specifies otherwise, the scope of work must require the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that MVBCN is purchasing.
- c. Proposal and evaluation process.
- i. The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
 - ii. MVBCN shall set forth selection criteria in the solicitation document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, these factors shall be reasonable estimates of actual future costs based on information available to MVBCN; and
 - iii. If MVBCN's solicitation process calls for MVBCN to establish a competitive range, MVBCN shall generally describe in the solicitation document the criteria or parameters MVBCN will apply to determine the competitive range. MVBCN, however, subsequently may determine or adjust the number of proposers in the competitive range in accordance with Section 20-0261(6).
- d. Applicable preferences including those described in ORS 279A.120, 279A.125(2) and 282.210.
- e. All contract terms and conditions that MVBCN determines are applicable to the procurement. MVBCN's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions MVBCN will not include in the Request for Proposal because MVBCN either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions.
- f. As required by ORS 279B.060(2)(h), the contract terms and conditions must specify the consequences of the contractor's failure to perform the scope of work or to meet the performance standards established by the resulting contract. Those consequences may include, but are not limited to:
- i. MVBCN's reduction or withholding of payment under the contract;
 - ii. MVBCN's right to require the contractor to perform, at the contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting contract; and
 - iii. MVBCN's rights, which MVBCN may assert individually or in combination, to declare a default of the resulting contract, to terminate the resulting contract, and to seek damages and other relief available under the resulting contract or applicable law.

(3) **Terms and Conditions.** MVBCN may include the applicable contractual terms and conditions in the form of contract provisions, or legal concepts to be included in the resulting contract. Further, MVBCN may specify that it will include or use proposer's terms and conditions that have been pre-negotiated under Section 20-0550(3), but MVBCN may only include or use a proposer's pre-negotiated terms and conditions in the resulting contract to the extent those terms and conditions do not materially conflict with the applicable contract terms and conditions. MVBCN shall not agree to any proposer's terms and conditions that were expressly rejected in a solicitation protest under Section 20-0730.

(4) **Multiple Awards.** For multiple award contracts, MVBCN may enter into contracts with different terms and conditions with each contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. MVBCN shall not agree to

any proposer's terms and conditions that were expressly rejected in a solicitation protest under Section 20-0730.

- (5) **Good Cause.** For the purposes of this Rule, "good cause" means a reasonable explanation for not requiring the contractor to meet the highest standards prevalent in the industry or business more closely involved in providing the Goods or Services under the Contract and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of MVBCN. MVBCN shall document in the procurement file the basis for the determination of good cause for specification otherwise. MVBCN will have good cause to specify otherwise when MVBCN determines:
- a. The use or purpose to which the goods or services will be put does not justify a requirement that the contractor meet the highest prevalent standards in performing the contract;
 - b. Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the goods or services will be compatible with or will operate efficiently or effectively with components, equipment, parts, services or information technology including hardware, services or software with which the goods or services will be used, integrated, or coordinated;
 - c. The circumstances of the industry or business that provides the goods or services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed; or
 - d. That other circumstances exists in which MVBCN's interest in achieving economy, efficiency, compatibility or availability in the procurement of goods or services reasonably outweighs MVBCN's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the goods or services to be delivered under the resulting contract.

20-0261 Procedures for Competitive Range, Multi-tiered and Multi-step Proposals

- (1) **Generally.** MVBCN may procure goods or services employing any combination of the methods of contractor selection as set forth in ORS 279B.060(8) and these Rules. In addition to the procedures set forth in these Rules for methods of contractor selection, MVBCN may utilize a multi-tiered or multi-step selection process that permits award to the highest ranked proposer at any tier or step that calls for the establishment of a competitive range or permits either serial or competitive simultaneous discussions or negotiations with one or more proposers. MVBCN may use one or more or any combination of the procedures set forth in this rule for competitive range, multi-tiered and multi-step proposals.
- (2) ORS 279B.060(3)(d), (e), and (8) authorize MVBCN to use methods of contractor selection that include, but are not limited to, multi-tiered or multi-step processes that embrace:
- a. The evaluation of Proposals only, including the evaluations of serial Proposals (a series of more than one Proposal from each Proposer that remains eligible in the competition at the particular tier of the competition);
 - b. The use of Proposals in connection with discussions with Proposers that lead to best and final Offers;
 - c. The use of Proposals in connection with serial negotiations with Proposers that lead to best and final Offers or to the award of a Contract;
 - d. The use of Proposals in connection with competitive negotiations with Proposers that lead to best and final Offers or to the award of a Contract; and
 - e. The use of Proposals in multi-tiered competition designed to identify, at each state of the competition, a class of Proposers that fall within a Competitive Range of Proposers that have a reasonable chance of being determined the most advantageous proposer or, in multiple-award situations, a reasonable chance of being determined an awardee of a Public Contract. Multi-tiered and multi-step competitions may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting

information from Proposers that bear on the selection of a Contractor or Contractors. In multi-tiered and multi-step competitions, MVBCN may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, as determined by the discretion of MVBCN.

- (3) When MVBCN's Request for Proposals prescribes a multi-tiered or multi-step contractor selection process, MVBCN may, at the completion of any stage in the competition and on determining the most advantageous proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts) award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. MVBCN also may, at any time, cancel the Procurement under ORS 279B.100.
- (4) **Exclusion Protest.** MVBCN may provide before the notice of intent to award an opportunity for a proposer to protest exclusion from the competitive range or from subsequent phases of multi-tiered or multi-step sealed proposals as set forth in Section 20-0720.
- (5) **Award Protest.** MVBCN shall provide an opportunity to protest its intent to award a contract pursuant to ORS 279B.410 and Section 20-0740. An affected proposer may protest, for any of the bases set forth in Section 20-0720 (2), its exclusion from the competitive range or any phase of a multi-tiered or multi-step sealed proposal process, or an addendum issued following initial closing, if MVBCN did not previously provide proposers the opportunity to protest the exclusion or addendum. The failure to protest shall be considered the proposer's failure to pursue an administrative remedy made available to the proposer by MVBCN.
- (6) **Competitive Range.** When MVBCN's solicitation process conducted pursuant to ORS 279B.060(8) calls for MVBCN to establish a competitive range at any stage in the procurement process, it may do so as follows:
 - a. Determining competitive range.
 - i. MVBCN may establish a competitive range after evaluating all responsive proposals in accordance with the evaluation criteria set forth in the RFP. After evaluation of all proposals in accordance with the criteria set forth in the RFP, MVBCN shall determine and rank the proposers in the competitive range. Notwithstanding the foregoing, however, in instances in which MVBCN determines that a single Proposer has a reasonable chance of being determined the most advantageous proposer, MVBCN need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, MVBCN may establish a competitive range of all proposers to enter into discussions with proposers for the purpose of correcting deficiencies in the proposals.
 - ii. MVBCN may establish the number of proposers in the competitive range in light of whether MVBCN's evaluation of proposals identifies a number of Proposers who have a reasonable chance of being determined the most advantageous proposers, or whether the evaluation establishes a natural break in the scores of proposers that indicates that a number of proposers are closely competitive, or have a reasonable chance of being determined the most advantageous proposer.
 - b. Protesting competitive range. MVBCN shall provide written notice to all proposers identifying proposers in the competitive range. MVBCN may provide an opportunity for proposers excluded from the competitive range to protest MVBCN's evaluation and determination of the competitive range in accordance with Section 20-0720.
- (7) **Discussions.** MVBCN may initiate oral or written discussions with all "eligible proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, MVBCN:
 - a. Shall treat all eligible proposers fairly and shall not favor any eligible proposer over another;
 - b. May disclose other eligible proposer's proposals or discussions only in accordance with 279B.060(8)(b) or (c);
 - c. May adjust the evaluation of a proposal as a result of discussions. The conditions, terms, or price of the proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the RFP.
 - d. At any time during the time allowed for discussions, MVBCN may:

- i. Continue discussions with a particular eligible proposer;
 - ii. Terminate discussions with a particular eligible proposer and continue discussions with other eligible proposers; or
 - iii. Conclude discussions with all remaining eligible proposers and provide to the then-eligible Proposers notice requesting best and final offers.
- (8) **Negotiations.** MVBCN may commence serial negotiations with the highest-ranked eligible proposers or commence simultaneous negotiations with all eligible proposers. MVBCN may negotiate:
- a. The statement of work;
 - b. The contract price as it is affected by negotiating the statement of work; and
 - c. Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP or addenda thereto. Proposers shall not submit for negotiation, and MVBCN shall not accept, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or any addenda.
- (9) **Terminating Negotiations.** At any time during discussions or negotiations that MVBCN conducts under this Rule, MVBCN may terminate discussions or negotiations with the highest-ranked proposer, or the eligible proposer with whom it is currently discussing or negotiating, if MVBCN reasonably believes that:
- a. The proposer is not discussing or negotiating in good faith; or
 - b. Further discussions or negotiations with the proposer will not result in the parties agreeing to the terms and conditions of a final contract in a timely manner.
 - c. Continuing Serial Negotiations. If MVBCN is conducting serial negotiations and MVBCN terminates negotiations with an eligible proposer, MVBCN may then commence negotiations with the next highest scoring eligible proposer, and continue the sequential process until MVBCN has either:
 - i. Determined to award the contract to the eligible proposer with whom it is currently discussing or negotiating; or
 - ii. Decided to cancel the Procurement under ORS 279B.100.
 - d. Competitive Simultaneous Negotiations. If MVBCN chooses to conduct competitive negotiations, MVBCN may negotiate simultaneously with competing eligible proposers. MVBCN:
 - i. Shall treat all eligible proposers fairly and shall not favor any eligible proposer over another;
 - ii. May disclose other eligible proposer's proposals or the substance of negotiations with other eligible proposers only if MVBCN notifies all of the eligible proposers with whom MVBCN will engage in negotiations of MVBCN's intent to disclose before engaging in negotiations with any eligible proposer.
 - e. Any oral modification of a proposal resulting from negotiations shall be reduced to writing by the proposer.
- (10) **Best and Final Offers.** If best and final offers are authorized, MVBCN shall establish a common date and time by which eligible proposers must submit best and final offers. If MVBCN is dissatisfied with the best and final offers, MVBCN may make a written determination that it is in MVBCN's best interest to conduct additional discussions, negotiations or change MVBCN's requirements and require another submission of best and final offers. MVBCN shall inform all eligible proposers that if they do not submit notice of withdrawal or another best and final offer, its immediately previous offer shall be construed as its best and final offer. MVBCN shall evaluate offers as modified by the best and final offer. MVBCN shall conduct the evaluations as described in Section 20-0600. MVBCN shall not modify evaluation factors or its relative importance after the date and time that best and final offers are due.
- (11) **Multi-step Sealed Proposals.** MVBCN may procure goods or services by using multi-step competitive sealed proposals pursuant to ORS 279.060(8)(g). Multi-step sealed proposals is a phased procurement process that seeks necessary information or unpriced technical proposals in the initial phase and invites proposers who submitted technically qualified proposals in the initial

phase to submit competitive sealed price proposals on the technical proposals in the final phase. The contract shall be awarded to the responsible proposer submitting the most advantageous proposal in accordance with the terms of the solicitation document applicable to the second phase. If time is a factor, MVBCN may require proposers to submit a separate sealed price proposal during the initial phase to be opened after the technical evaluation.

- a. Public notice. Whenever multi-step sealed proposals are used, public notice for the first phase shall be given in accordance with Section 20-0300. Public notice is not required for the subsequent phases. MVBCN shall give notice of the subsequent phases to all proposers and inform any proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 20-0720.
- b. Procedure for phase one of multi-step sealed proposals. MVBCN shall initiate a multi-step sealed proposals procurement by issuing a Request for Proposals in the form and manner required for competitive sealed proposals except as provided in this section. In addition to the requirements set forth in Section 20-0260 (2), the multi-step RFP shall state:
 - i. That unpriced technical proposals are requested;
 - ii. That the solicitation is a multi-step sealed proposal procurement, and that in the second phase, price proposals will be accepted only from those proposers whose unpriced technical proposals are found qualified in the first phase;
 - iii. The criteria to be used in the evaluation of unpriced technical proposals;
 - iv. That the goods or services being procured shall be furnished generally in accordance with the proposer's technical proposal as found to be finally qualified and shall meet the requirements of the RFP.
- c. Addenda to the RFP. After receipt of unpriced technical proposals, addenda to the RFP shall be distributed only to proposers who submitted unpriced technical proposals.
- d. Receipt and Handling of Unpriced Technical Proposals. Unpriced technical proposals need not be opened publicly.
- e. Evaluation of unpriced technical proposals. Unpriced technical proposals shall be evaluated solely in accordance with the criteria set forth in the RFP.
- f. Discussion of Unpriced Technical Proposals. MVBCN may seek clarification of a technical proposal of any proposer who submits a qualified, or potentially qualified technical proposal. During the course of such discussions, MVBCN shall not disclose any information derived from one unpriced technical proposal to any other proposer.
- g. Methods of Contractor Selection for Phase One. In conducting phase one, MVBCN may employ any combination of the methods of contractor selection that call for the establishment of a competitive range or include discussions, negotiations, or best and final offers as set forth in this Rule.
- h. Procedures for Phase Two. Upon the completion of phase one, MVBCN shall either:
 - i. Open price proposals submitted in phase one (if price proposals were required to be submitted) from proposers whose unpriced technical proposals were found to be qualified; or
 - ii. If price proposals have not been submitted, technical discussions have been held, or addenda to the RFP have been issued, invite each qualified Proposer to submit price proposals.

Phase two shall be conducted as any other competitive sealed proposal solicitation except as specifically set forth in this rule; and

- i. No public notice need be given of the request to submit price proposals, because notice was previously given.

20-0265 Small Procurements

(1) Generally.

- a. When the amount of a purchase of goods or services is not more than \$10,000, MVBCN may award a contract in any manner deemed practical or convenient by MVBCN, including direct selection or award. Competitive quotes may be used when feasible.
- b. Personal Services Contracts pursuant to Section 10-0335 (3)(b) not more than \$75,000 may be made as a small procurement and awarded in any manner deemed practical or convenient by MVBCN, including direct selection or award.

(2) Amendments.

- a. MVBCN may amend a public contract awarded as a small procurement in accordance with Section 20-0800, but the cumulative amendments shall not increase the total contract to a sum that is greater than twenty-five percent (25%) of the original contract price or an amount greater than \$12,500.
- b. MVBCN may amend a personal services contract awarded as a small procurement in accordance with Section 20-0800, but the cumulative amendments shall not increase the total contract to a sum that is greater than twenty-five percent (25%) of the original contract price or an amount greater than \$93,750, without obtaining additional quotes.

(3) No Fragmentation. A procurement may not be artificially divided or fragmented so as to constitute a small procurement, pursuant to ORS 279B.065(2).

20-0270 Intermediate Procurements

(1) Generally.

- a. When the amount of a purchase of goods or services is more than \$10,000, but is not more than \$25,000, MVBCN shall seek at least three verbal or written competitive price quotes or proposals. MVBCN shall keep a written record of the sources of the quotes or proposals received.
- b. When the amount of a purchase of goods or services is more than \$25,000, but is not more than \$150,000, MVBCN shall seek at least three written competitive price quotes or proposals. MVBCN shall keep a written record of the sources of the quotes or proposals received.
- c. If three quotes or proposals are not reasonably available, fewer will suffice, but MVBCN shall make a written record of the effort made to obtain the quotes or proposals.

(2) Negotiations. MVBCN may only negotiate with a proposer to clarify its quote or proposal or to effect modifications in order to make the quote or proposal acceptable or make the quote or proposal more advantageous to MVBCN.

(3) Amendments. MVBCN may amend a public contract or personal services contract awarded as an intermediate procurement in accordance with Section 20-0800, but the cumulative amendments shall not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price unless authorized by the Board Chair or designee.

20-0275 Sole Source Procurements

(1) MVBCN may award a contract without competition as sole-source procurement pursuant to the requirements of ORS 279B.075.

(2) MVBCN shall verify that the goods or services, or class of goods or services, are available from only one source. MVBCN's determination of a sole source must be based on written findings that may include:

- a. The efficient utilization of existing goods or services requires the acquisition of compatible goods or services;
- b. The goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
- c. The goods or services are for use in a pilot or an experimental project; or

- d. Other findings that support the conclusion that the goods or services are available from only one source.
- (3) To the extent feasible, MVBCN shall negotiate with the sole source to obtain contact terms advantageous to MVBCN.
- (4) If MVBCN determines that it may enter into a contract as a sole-source that MVBCN would be required to select a contractor using source selection methods set forth in these Rules for contracts more than \$150,000, MVBCN shall give public notice of MVBCN's determination that the goods or services or class of goods or services are available from only one source. MVBCN shall publish such notice in a manner similar to public notice of competitive sealed bids under ORS 279B.055(4) and Section 20-0300. The public notice shall describe the goods or services to be acquired by a sole-source procurement, identify the prospective contractor and include the date, time and place that protests are due. Affected persons shall have at least seven (7) days from the date of the notice of the sole-source determination to protest the sole-source determination.
- (5) An affected person may protest MVBCN's determination that the goods or services or class of goods or services are available from only one source in accordance with Section 20-0710.

20-0280 Emergency Procurements

- (1) MVBCN may award a public contract as an emergency procurement pursuant to the requirements of ORS 279B.080. When an emergency procurement is authorized, the procurement shall be made with competition that is practical under the circumstances.
- (2) The Executive Director may declare an emergency, and execute a contract, without prior Board approval, if it is determined that the standards set forth in subsection (1) above are met. The Executive Director shall, as soon as practical, formally notify the Board of any contract entered into pursuant to this provision, documenting the nature of the emergency and the method used for selection of the particular contractor.
- (3) Any contract under this exemption shall be executed within sixty days following declaration of the emergency, unless the Board grants an exemption.
- (4) Although no dollar limit applies to emergency contracts, the scope of the contract shall be limited to work or purchases that are necessary and appropriate to address the conditions creating the emergency as described in the resolution.
- (5) Emergency contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work or purchases necessary and appropriate for related emergency circumstances.

20-0285 Special Procurements

- (1) **Generally.** MVBCN may award a contract as a special procurement pursuant to the requirements of ORS 279B.085.
- (2) **Public Notice.** MVBCN shall give public notice of the request for approval of a special procurement in a manner similar to public notice of competitive sealed bids under ORS 279B.055(4) and Section 20-0300.
 - a. The notice shall describe the goods or services or class of goods or services to be acquired through special procurement.
 - b. MVBCN shall give public notice of a request for approval of a special procurement at least seven (7) days prior to the approval of the special procurement by the Board.
 - c. MVBCN shall give public notice of the approval of a special procurement at least seven (7) days before award of the contract.
- (3) **Length of Time.** Special Procurements must state length of time/duration for the intended special procurement.
- (4) **Protest.** An affected person may protest the approval of or request for approval of a special procurement in accordance with ORS 279B.400 and Section 20-0700.

20-0290 Cooperative Procurements

MVBCN may participate in, sponsor, conduct, or administer cooperative procurements as set forth in ORS 279A.200 through 279A.225 and these Rules.

PROCUREMENT PROCESS

20-0300 Public Notice of Solicitation Document

- (1) **Notice of Solicitation Documents.** MVBCN shall provide public notice of every formal competitive solicitation document in accordance with subsection (2) of this rule. MVBCN may give additional notice using any method it determines appropriate to foster and promote competition, including:
 - a. Mailing notice of the availability of the solicitation document to persons who have expressed an interest in MVBCN's procurements.
 - b. Placing notice on MVBCN's Internet website.
- (2) **Advertising.** MVBCN shall advertise every notice of a formal competitive solicitation document as follows:
 - a. MVBCN shall publish the advertisement for offers in accordance with ORS 279B.055(4) and 279B.060(5).
- (3) **Content of Advertisement.** All advertisements for formal competitive offers shall set forth:
 - a. Where, when, how, and for how long the solicitation documents may be obtained;
 - b. A general description of the goods or services to be acquired;
 - c. The interval between the first date of notice of the solicitation documentation given in accordance with subsection (2)(a) above and closing, which shall be no less than seven (7) days for an ITB or an RFP as set forth in ORS 279B.055 (4)(f).
 - d. The date that persons must file applications for pre-qualifications if a requirement and the class of goods or services is one requiring persons must be pre-qualified;
 - e. The office where contract terms, conditions and specifications may be reviewed;
 - f. The name, title and address of the individual authorized by MVBCN to receive offers;
 - g. The scheduled opening; and
 - h. Any other information MVBCN deems appropriate.
- (4) **Posting Advertisement for Offers.** MVBCN will post a copy of each advertisement for formal competitive offers at its office. An offeror may obtain a copy of the advertisement for offers upon request.
- (5) **Minority, Women and Emerging Small Business.** In accordance with ORS 200.035, MVBCN should provide timely notice of all procurements to the Advocate for Minority, Women and Emerging Small Business if the estimated contract price exceeds \$5,000.
- (6) **Fees.** MVBCN may charge a fee or require a deposit for the solicitation document.
- (7) **Notice of Addenda.** MVBCN shall provide potential offerors notice of any addenda to a solicitation document in accordance with these rules.

20-0310 Bids or Proposals are Offers

- (1) **Offer and Acceptance.** The bid or proposal is the bidder's or proposer's offer to enter into a contract.
 - a. In competitive bidding and competitive proposals, the offer is always a firm offer (i.e. the offer shall be held open by the offeror for MVBCN's acceptance for the period specified in Section 20-0480). MVBCN may accept the offer at any time during the specified period and MVBCN's award of the contract constitutes acceptance of the offer and binds the offeror to perform the contract.
 - b. Notwithstanding the fact that a competitive proposal is a firm offer for the period specified in Section 20-0480, MVBCN may elect to discuss or negotiate certain contractual provisions,

as identified in these Rules or in the solicitation document with the proposer. Where negotiation is permitted by these Rules or the solicitation document, proposers are obligated to negotiate in good faith and only on those terms that the Rules or the solicitation document have reserved for negotiation.

- (2) **Contingent Offers.** Except to the extent the proposer is authorized to propose certain terms and conditions pursuant to Section 20-0261 of these Rules, a proposer shall not make its offer contingent upon MVBCN's acceptance of any terms or conditions (including specifications) other than those contained in the solicitation document.
- (3) **Offeror's Acknowledgement.** By signing and returning the offer, the offeror acknowledges it has read and understands the terms and conditions contained in the solicitation document and that it accepts and agrees to be bound by the terms and conditions of the solicitation document. If the RFP permits proposal of alternative terms or conditions under Section 20-0261, the proposer agrees to be bound by the non-negotiable terms and conditions of the Contract and any proposed terms and conditions offered for negotiation upon MVBCN's written acceptance of the proposed terms and conditions.

20-0320 Facsimile Submission of Bids or Proposals

- (1) MVBCN may authorize bidders and proposers to submit facsimile offers. If MVBCN determines that ITB or RFP security is required, MVBCN shall describe another method for receipt of such security in the solicitation document.
- (2) All facsimile responses, when authorized, must arrive at the place and by the time specified in the solicitation document.
- (3) The bidder or proposer must sign all facsimile offers.
- (4) MVBCN may award a contract based solely upon a facsimile offer. However, the offeror must, upon request of MVBCN, promptly submit its complete original signed offer.
- (5) Before authorizing facsimile offers for ITB or RFP, MVBCN shall establish procedures and controls for receiving, identifying, recording, and safeguarding facsimile offers, to ensure timely delivery of the offers to the opening location and to preserve the "sealed" requirement of competitive procurement.
- (6) MVBCN is not responsible for any failure attributed to the transmission or receipt of the facsimile or electronic offer including, but not limited to the following:
 - a. Receipt of garbled or incomplete documents;
 - b. Availability or condition of the receiving facsimile machine;
 - c. Incompatibility between the sending and receiving facsimile machine;
 - d. Delay in transmission or receipt of documents;
 - e. Failure of the offeror to properly identify the offer documents;
 - f. Illegibility of offer documents; and
 - g. Security and confidentiality of data.

20-0330 Electronic Procurement

- (1) **Electronic Procurement Authorized.**
 - a. MVBCN may conduct all phases of a procurement, including the posting of electronic advertisements and the receipt of electronic offers by electronic methods, when authorized, if and to the extent MVBCN specifies in a solicitation document, a request for quotes, or any other written instructions on how to participate in the procurement.
 - b. MVBCN shall open an electronic offer when authorized, in accordance with electronic security measures in effect at MVBCN at the time of its receipt of the electronic offer. Unless MVBCN provides procedures for the secure receipt of electronic offers, the person submitting the electronic offer assumes the risk of premature disclosure due to submission in unsealed form.

- c. MVBCN may limit the use of electronic methods of conducting procurement as advantageous to MVBCN. MVBCN's use of electronic signatures shall be consistent with applicable statutes and rules.
 - d. If MVBCN determines that bid or proposal security is or will be required, MVBCN will not authorize electronic offers unless it provides another method for receipt of such security.
- (2) MVBCN shall conduct all portions of an electronic procurement in compliance with Section 20 of these rules, unless otherwise set forth in this Rule.
 - (3) Before authorizing electronic offers, MVBCN will establish procedures and controls for receiving, identifying, recording, and safeguarding electronic offers, to ensure timely delivery of the offers to the opening location and to preserve the "sealed" requirement of competitive procurement.
 - (4) In the event of a failure of MVBCN's method of electronic procurement system that interferes with the ability of persons to submit electronic offers, protest or to otherwise participate in the procurement, MVBCN may cancel the procurement in accordance with Section 20-0660, or may extend the date and time for receipt of electronic offers by providing notice of the extension immediately after the electronic procurement system becomes available.

BID AND PROPOSAL PREPARATION

20-0400 Offer Preparation

- (1) **Instructions.** An offeror shall submit and sign its offer according to the instructions set forth in the solicitation document. An offeror shall initial and submit any correction or erasure to its offer prior to opening according to the instructions provided in the solicitation document.
- (2) **Forms.** An offeror shall submit its offer on the form(s) provided in the solicitation document, unless instructed otherwise by the solicitation document.
- (3) **Documents.** An offeror shall provide MVBCN with all documents and descriptive literature required by the solicitation document.
- (4) **Electronic Submissions.** If authorized by MVBCN, the offeror may submit its offer electronically. MVBCN shall not consider electronic offers unless they are authorized by the solicitation document.

20-0410 Offer Submission

- (1) MVBCN may require product samples or descriptive literature if MVBCN determines either is necessary or desirable to evaluate the quality, features or characteristics of an offer. MVBCN will dispose of product samples, or make them available for the offeror to retrieve in accordance with the solicitation document.
- (2) **Identification of Offers.**
 - a. To ensure proper identification and special handling, offers shall be submitted in a sealed envelope appropriately marked. If facsimile or electronic offers are permitted in the solicitation document, the supplier may submit and identify facsimile or electronic offers in accordance with the solicitation document.
 - b. MVBCN shall not be responsible for offers submitted in any manner, format or to any delivery point other than as required in the solicitation document.
- (3) The offeror is responsible for ensuring that MVBCN receives its offer at the required delivery point prior to closing, regardless of the method used to submit or transmit the offer.

20-0420 Pre-Offer Conferences

- (1) MVBCN may hold pre-offer conferences with prospective offerors prior to closing to explain the procurement requirements, obtain information or to conduct site inspections.
- (2) MVBCN may require attendance at the pre-offer conference as a condition for making an offer.

- (3) If MVBCN holds a pre-offer conference, it shall be held within a reasonable time after the solicitation has been issued, but sufficiently before the closing to allow offers to consider information provided at the conference.
- (4) Statements made by MVBCN representative at the pre-offer conference do not change the solicitation document unless MVBCN confirms such statements with a written addendum to the solicitation document.
- (5) MVBCN shall provide notice of any pre-offer conference in the solicitation document as set forth in Section 20-0255(2) or 20-0260(2).

20-0430 Addenda to Solicitation Document

- (1) **Issuance; Receipt.** MVBCN may change a solicitation document only by written addenda. An offeror shall provide written acknowledgment of the receipt of all issued addenda with its offer, unless MVBCN otherwise specifies in the addenda.
- (2) **Notice and Distribution.** The solicitation documentation shall specify how MVBCN will provide notice and how MVBCN will make addenda available to offerors. MVBCN shall provide addenda by mail, facsimile, or electronic transmission to all offerors known to have obtained the solicitation document or to have attended any mandatory pre-offer conference.
- (3) **Timelines; Extensions.**
 - a. MVBCN shall not issue an addendum within 72 hours before closing, unless the addendum also extends the closing for a reasonable time, to allow prospective offerors to consider the addenda in preparing its offers. MVBCN may extend the closing if MVBCN determines prospective offerors need additional time to review addenda.
 - b. Notwithstanding subsection (3)(a) of this Rule, an addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multi-step sealed bid or a multi-tiered or multi-step sealed proposal issued in accordance with ORS 279B.060(8) and Section 20-0261 of these rules must be issued no fewer than five (5) days before the beginning of that tier or step of competition. MVBCN shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the solicitation document, the location of the remaining eligible proposers or whether shortening the period between issuing an addendum and the beginning of the next tier or step of competition favors or disfavors any particular proposer or proposers.
- (4) **Request for Change or Protest.** Unless a different deadline is set forth in the addenda, offeror may submit a written request for change or protest to an addendum as provided in the solicitation document, within 24 hours following issuance of the addendum, or up to the last day allowed to submit a request for change or protest under Section 20-0730, whichever date is later. MVBCN shall consider only an offeror's request for change or protest to the addendum; MVBCN shall not consider a request for change or protest to matters not added or modified by addenda.

20-0440 Pre-Closing Modification or Withdrawal of Offers

- (1) **Modifications.** An offeror may modify its offer in writing prior to the closing. An offeror shall prepare and submit any modification to its offer to MVBCN in accordance with these rules, unless otherwise specified in the solicitation document. Any modification must include the offeror's statement that the modification amends and supersedes the prior offer. The offeror shall mark the submitted modification as follows:
 - a. Bid or proposal modification; and
 - b. Solicitation number or name.
- (2) **Withdrawals:**
 - a. The offeror may withdraw its offer by written notice submitted and delivered on the offeror's letterhead, signed by an authorized representative of the offeror and received by MVBCN prior to the closing. The offeror or authorized representative may also withdraw its offer in person prior to the closing upon presentation of the appropriate identification.

- b. MVBCN shall release an unopened offer withdrawn under subsection (2)(a) to the offeror after voiding any date and time stamp mark;
 - c. The offeror shall mark the written request to withdraw an offer as follows:
 - i. Bid or proposal withdrawal; and
 - ii. Solicitation number or name
- (3) **Documentation.** MVBCN shall include all documents relating to the modification or withdrawal of offers in the appropriate procurement file.

20-0450 Receipt, Opening and Recording of Offers; Confidentiality of Offers

- (1) **Receipt.** All offers must be received at the MVBCN office, unless otherwise stated in the solicitation document. MVBCN shall electronically or mechanically time-stamp or hand-mark each offer and any modification upon receipt. Offers shall be stored in a secure place until opening. If the offer is inadvertently opened prior to the opening (e.g., MVBCN inadvertently opened the offer due to improper identification of the offer), MVBCN shall document the resealing for the procurement file.
- (2) **Opening and Recording.** MVBCN shall publicly open offers including any modifications made to the offer pursuant to Section 20-440(1). In the case of ITB to the extent practical, MVBCN shall read aloud the name of each bidder, and such other information as MVBCN considers appropriate. MVBCN shall not read aloud in the case of RFP or voluminous bids, if the solicitation document so provides.
- (3) **Availability.**
 - a. After opening, MVBCN shall make the offers available for public inspection except for those portions of an offer that the offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. To the extent MVBCN determines this designation is not in accordance with applicable law, MVBCN shall make those portions available for public inspection. The offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its offer. Prices, makes, model, or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall not be confidential, but shall be publicly available regardless of an offeror's designation to the contrary.
 - b. RFPs shall not be made available for public inspection until the notice of intent to award has been published. Proposers must designate any trade secrets or confidential proprietary data as outlined above.

20-0460 Late Offers, Withdrawals, and Modifications

Any offer received after closing is late. An offeror's request to withdraw or modify an offer received after closing is late. MVBCN shall not consider late offers, withdrawals or modifications, except as permitted in Section 20-0470 or Section 20-0261.

20-0470 Mistakes

- (1) **General.** To protect the integrity of the competitive procurement process and to assure fair treatment of offerors, MVBCN shall carefully consider whether to permit waiver, correction or withdrawal of offers for certain mistakes.
- (2) **MVBCN Treatment of Mistakes.** MVBCN shall not allow an offeror to correct or withdraw an offer for an error in judgment. If MVBCN discovers certain mistakes in an offer after opening, but before award of the contract, MVBCN may take the following action:
 - a. MVBCN may waive or permit a bidder or proposer to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the offer, or an insignificant mistake that can be waived or corrected without prejudice to other offerors. Examples of minor informalities include an offeror's failure to:

- i. Return the correct number of signed offers or the correct number of other documents required by the solicitation document;
 - ii. Sign the offer in the designated block, provided a signature appears in the offer evidencing an intent to be bound; and
 - iii. Acknowledge receipt of an addendum to the solicitation document, provided: it is clear on the face of the offer that the offeror received the addendum and intended to be bound by its terms; or the addendum involved did not affect price, quality or delivery.
- b. MVBCN may but is not required to correct a clerical error if the intended offer and the error are evident on the face of the offer or other documents submitted with the offer, and the offeror verifies MVBCN's correction in writing. A clerical error is an offeror's error in drafting its offer. In the event of a discrepancy between the extended prices and unit prices, unit prices shall prevail over extended prices, unless the correct amount is evident.
- c. MVBCN may permit an offeror to withdraw an offer based on one or more clerical errors in the offer only if the offeror shows by clear and convincing evidence:
- i. The nature of the error;
 - ii. That the error is not a judgment error or a minor informality;
 - iii. The error cannot be waived or corrected pursuant to subsections (a) and (b) of this section;
 - iv. The offeror acted in good faith in submitting an offer that contained a claimed error and in claiming the alleged error in the offer exists;
 - v. The offeror acted without gross negligence in submitting an offer that contained a claimed error;
 - vi. The offeror will suffer substantial detriment if MVBCN does not grant the offeror permission to withdraw the offer;
 - vii. That MVBCN's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on MVBCN or the public it represents; and
 - viii. The offeror promptly gave notice of the claimed error to MVBCN.
- d. The criteria in Subsection (2)(c) of this Rule shall determine whether MVBCN will permit an offeror to withdraw its offer after closing. These criteria also shall apply to the question of whether MVBCN will permit an offeror to withdraw its offer without forfeiture of its bid bond (or other bid or proposal security), or without liability to MVBCN based on the difference between the amount of the offeror's offer and the amount of the contract actually awarded by MVBCN, whether by Award to the next lowest responsive and responsible bidder or the most advantageous responsive and responsible proposer or by resort to a new solicitation.
- (3) **Rejection for Mistakes.** MVBCN shall reject any offer in which a mistake is evident on the face of the offer and the intended correct offer is not evident or cannot be substantiated from documents accompanying the offer (i.e., documents submitted with the offer, pursuant to solicitation requirements).
- (4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are offeror's only opportunity to correct mistakes or withdraw offers because of a mistake. Following award, an offeror is bound by its offer, and may withdraw its offer or rescind a contract entered into pursuant to Section 20 Rules only to the extent permitted by applicable law.

20-0480 Time for MVBCN Acceptance

An offer is irrevocable, valid and binding on the offeror for not less than 60 days from closing unless otherwise specified in the solicitation document.

20-0490 Extension of Time for Acceptance of Offer

MVBCN may request, orally or in writing, that an offeror extend in writing the time during which MVBCN may accept its offer. If an offeror agrees to an extension, the offer shall be irrevocable, valid and binding for the agreed upon extension.

20-0500 Responsibility of Bidders and Proposers

Before awarding a contract MVBCN shall determine that the bidder submitting the lowest bid or the proposer submitting the most advantageous proposal is responsible. MVBCN shall use the standards as set forth in ORS 279B.110 to make this determination. In the event MVBCN determines an offeror is not responsible, it shall prepare a written determination as required by ORS 279B.110 and shall reject the offer.

20-0550 Prequalification of Prospective Offerors; Pre-Negotiation of Contract Terms and Conditions

- (1) MVBCN may prequalify prospective offerors pursuant to ORS 279B.120 and 279B.125.
- (2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), MVBCN may determine that a prequalified offeror is not responsible prior to contract award.
- (3) MVBCN may pre-negotiate some or all contract terms and conditions including prospective proposer contract forms such as license agreements, maintenance and support agreements or similar documents for use in future procurements. Such pre-negotiation of contract terms and conditions (including prospective proposer forms) may be part of the prequalification process of a proposer in Section (1) or the pre-negotiation may be a separate process and not part of a prequalification process. Unless required as part of the prequalification process, the failure of MVBCN and the prospective proposer to reach agreement on pre-negotiated contract terms and conditions does not prohibit the prospective proposer from responding to procurements. MVBCN may agree to different pre-negotiated contract terms and conditions with different prospective proposers. When MVBCN has pre-negotiated different terms and conditions with proposers or when permitted, proposers offer different terms and conditions, MVBCN may consider the terms and conditions in the proposal evaluation process.

20-0575 Debarment of Prospective Offerors

MVBCN may debar prospective offerors as defined in OAR 137-047-0575.

20-0600 Offer Evaluation and Award

- (1) MVBCN shall evaluate offers only as set forth in the solicitation document pursuant to Sections 20-0255 and 20-0260 and applicable law.
 - a. Evaluation of Bids.
 - i. Non-resident bidders. MVBCN shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and these rules for non-resident bidders.
 - ii. Awards when bids are identical. If MVBCN determines that one or more bids are identical under Section 10-0300, MVBCN shall award a contract in accordance to procedures outlined in these Rules.
 - b. Evaluation of Proposals.
 - i. Award when proposals are identical. If MVBCN determines that one or more proposals are identical under Section 10-0300, MVBCN shall award a contract in accordance to procedures outline in these Rules.
 - ii. Recycled materials. When procuring goods, MVBCN shall give preference for recycled materials as set forth in ORS 279A.125 and Section 10-0320.
- (2) **Clarification of Bids or Proposals.** After opening, MVBCN may conduct discussions with apparent responsive bidders for the purpose of clarification to assure full understanding of the bids or proposals. All bids or proposals, in MVBCN's sole discretion, needing clarification may be accorded such an opportunity at MVBCN's sole discretion. MVBCN shall document clarification of any offeror's bid or proposal in the procurement file.
- (3) **Negotiations.**
 - a. Bids. MVBCN shall not negotiate with any bidder. After award of the contract, MVBCN may only modify a contract in accordance with Section 20-0800.

- b. Requests for proposals. MVBCN may conduct discussions or negotiate with proposers only in accordance with Section 20-0261. After award, MVBCN may modify a contract only in accordance with Section 20-0800.

(4) **Award.**

- a. General. MVBCN shall award a contract to the responsible bidder submitting the lowest, responsible bid or the responsible proposer submitting the most advantageous, responsive proposal. MVBCN may award by item, groups of items or the entire offer provided such award is consistent with the solicitation document and in the public interest.
- b. Multiple items. An ITB or RFP may call for pricing of multiple items of similar or related type with award based on individual line item, group total of certain items, a “market basket” of items representative of MVBCN’s expected purchases, or grand total of all items.
- c. Multiple awards - bids or proposals
 - i. MVBCN may award multiple contracts under an ITB or RFP if it is set forth in the solicitation document. Multiple awards shall not be made if a single award meets MVBCN’s needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple award may be made if two or more offerors of similar goods or services is necessary for adequate availability, delivery, service or product compatibility and skills. Multiple awards may not be made for the purpose of dividing the procurement into multiple solicitations or to allow for user preference unrelated to utility or economy. A notice to offerors that multiple contracts may be awarded for any bid or proposal shall not preclude MVBCN from awarding a single contract.
 - ii. MVBCN shall specify in the solicitation document the criteria for selection between multiple contracts when purchasing goods or services.
- d. Partial awards. If after reviewing offers, MVBCN determines that an acceptable offer has been received for only parts of the requirements of the solicitation document:
 - i. MVBCN may award a contract for which acceptable offers have been received; or
 - ii. MVBCN may reject all offers and may issue a new solicitation document on the same or revised terms, conditions and specifications.
- e. All or none offers. MVBCN may award all or none offers if the evaluation shows an all or none award to be the lowest cost for bids or the most advantageous for proposals.

20-0610 Notice of Intent to Award

- (1) Unless otherwise provided in the solicitation document, MVBCN shall provide notice of its intent to award to all offerors pursuant to ORS 279B.135 at least seven (7) days before the award of a contract, unless MVBCN determines that circumstances require the prompt execution of the contract, in which case MVBCN may provide a shorter notice period. This section does not apply to contracts awarded as a small procurement (ORS 279B.065) or an intermediate procurement (ORS 279B.070).
- (2) **Finality.** MVBCN’s award shall not be final until the later of the following:
 - a. The expiration of the protest period provided pursuant to Section 20-0740; or
 - b. MVBCN provides written responses to all timely filed protests denying the protests and affirming the award.

20-0620 Documentation of Award

- (1) **Basis of Award.** After award, MVBCN shall make a record showing the basis for determining the successful offeror part of MVBCN procurement file.
- (2) **Contents of Award Record.** MVBCN’s record shall include:
 - a. For bids: The bids, completed tabulation sheet and written justification for any rejection of lower bids.
 - b. For proposals: The proposals, the completed evaluation of proposals, written justification for any rejection of higher scoring proposals and if MVBCN engaged in any of the methods of contractor selection described in ORS 279B.060(8) and Section 20-0261, written

documentation of the content of any discussions, negotiations, best and final offers or any other procedures MVBCN used to select a proposer to which MVBCN awarded a contract.

20-0630 Availability of Award Decisions

- (1) **Contract Documents.** To the extent required by the solicitation document, MVBCN shall deliver a contract, signed purchase order, or other contract documents, as applicable, to the successful offeror.
- (2) **Availability of Award Decisions.** A person may obtain tabulations of awarded bids or evaluation summaries of proposals for a minimal charge, in person or by submitting to MVBCN a written request accompanied by payment. The requesting person shall clearly identify the bid or proposal for which s/he is requesting award decision information. In addition, MVBCN may make available tabulations of bids and proposals through MVBCN's website.

20-0640 Rejection of an Offer

- (1) **Rejection of an Offer.**
 - a. MVBCN may reject any offer as set forth in ORS 279B.100.
 - b. MVBCN shall reject an offer upon finding that the offer:
 - i. Is contingent upon MVBCN's acceptance of terms and conditions (including specifications) that differ from the solicitation document;
 - ii. Takes exception to terms and conditions (including specifications) set forth in the solicitation document;
 - iii. Attempts to prevent public disclosure of matters in breach of the terms and conditions of the solicitation document or applicable law;
 - iv. Offers goods or services that fail to meet the specifications of the solicitation document;
 - v. Is late;
 - vi. Is not in substantial compliance with the solicitation document; or
 - vii. Is not in substantial compliance with all prescribed public procurement procedures.
 - c. MVBCN shall reject an offer upon MVBCN's findings that the offeror:
 - i. Has not been pre-qualified under ORS 279B.120 and MVBCN's required mandatory prequalification;
 - ii. Has been debarred as set forth in ORS 279B.130 or has been disqualified pursuant to OAR 137-046-0210 (DBE Disqualification).
 - iii. Has not met the requirements of ORS 279A.105, if required.
 - iv. Has not submitted properly executed bid or proposal security as required.
 - v. Has failed to provide the certification of non-discrimination required under ORS 279A.110(4) or
 - vi. Is non-responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a contract. Before awarding a contract, MVBCN must have information that indicates that the offeror meets the applicable standards of Responsibility. To determine that an offeror is responsible, MVBCN must determine, pursuant to ORS 279B.110, that the offeror:
 - A. Has available or the ability to obtain the appropriate financial, material, equipment, facility and personnel resources and expertise, necessary to meet all contractual responsibilities; and
 - B. Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the offeror's control, the offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. MVBCN should carefully scrutinize an offeror's record of contract performance if the offeror is or recently has been materially deficient in contract performance. In reviewing the offeror's performance, MVBCN should determine whether the offeror's deficient

performance was expressly excused under the terms of the contract, or whether the offeror took appropriate corrective action. MVBCN may review the offeror's performance on both private and public contracts in determining the offeror's record of contract performance. MVBCN shall make its basis for determining an offeror is non-responsible under this subparagraph part of the procurement file pursuant to ORS 279B.110(2)(b);

- C. Has a satisfactory record of integrity. An offeror may be found to lack integrity if MVBCN determines the offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a contracting agency. MVBCN may find an offeror not-responsible based on the lack of integrity of any person having influence or control over the offeror (such as a key employee of the offeror that has the authority to significantly influence the offeror's performance of the contract or a parent company, predecessor or successor person). The standards for debarment under ORS 279B.130 may be used to determine an offeror's integrity. MVBCN may find an offeror not-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the offeror's performance of a contract or subcontract. MVBCN shall make its basis for determining that an offeror is not-responsible under this subparagraph part of the procurement file pursuant to 279B.110(2)(c); and
- D. Is legally qualified to contract with MVBCN as defined in OAR 137-047-0640(1)(c)(F)(iv);
- E. Has attested in Writing that the offeror complied with the tax laws of this state and of political subdivisions of this state; and
- F. Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the offeror fails to promptly supply information requested by MVBCN concerning Responsibility, MVBCN shall base the determination of Responsibility upon any available information or may find the offer non-responsible.

- (2) **Form of Business Entity.** MVBCN may investigate any person submitting an offer to determine application of this subsection or to apply the debarment provisions of ORS 279B.130. The investigation may include that person's officers, directors, owners, affiliates, or any other person acquiring ownership of the person to determine application of this section or to apply the debarment provisions of Section 20-0575.

20-0650 Rejection of All Offers

- (1) MVBCN may reject all offers upon a written finding it is in the public interest to do so. MVBCN shall notify all offerors of the rejection of all offers, along with the justification and finding.
- (2) MVBCN may reject all offers upon a written finding that:
 - a. The content of or an error in the solicitation document, or the solicitation process unnecessarily restricted competition for the contract;
 - b. The price, quality or performance presented by the offeror is too costly or of insufficient quality to justify acceptance of the offer;
 - c. Misconduct, error or ambiguous or misleading provisions in the solicitation document threaten the fairness and integrity of the competitive process;
 - d. Causes other than legitimate market forces threaten the integrity of the competitive procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or unintentional errors in the solicitation document;
 - e. The solicitation was cancelled in accordance with Section 20-0660; or
 - f. Any other circumstance indicating completion of the solicitation would not be in the public interest.

20-0655 Suspension of Solicitation

- (1) **Suspension of Solicitation.** MVBCN may suspend a solicitation if MVBCN finds that it is in the public's interest to suspend the solicitation until further notice. The reasons for the suspension shall be made part of the procurement file.
- (2) **Notice of Suspension.** If MVBCN suspends the solicitation, written notice shall be provided through a written addendum and delivered pursuant to Section 20-0430 of these Rules. The addendum shall include the reason for suspension and anticipated length of suspension period.

20-0660 Cancellation of Procurement or Solicitation

- (1) **Cancellation in the Public Interest.** MVBCN may cancel a solicitation if MVBCN finds that cancellation is in the public interest. MVBCN's reasons for cancellation shall be made part of the solicitation file.
- (2) **Notice of Cancellation.** If MVBCN cancels a solicitation prior to the opening, MVBCN shall provide notice of cancellation. Notice of cancellation shall:
 - a. Identify the solicitation;
 - b. Briefly explain the reason for cancellation; and
 - c. If appropriate, explain that an opportunity shall be given to compete on any re-solicitation.
- (3) **Notice of Cancellation after Opening.** If MVBCN cancels a procurement or solicitation after opening, MVBCN shall provide written notice of cancellation to all offerors who submitted offers.

20-0670 Disposition of Offers if Procurement or Solicitation Cancelled

- (1) **Prior to Opening.** If MVBCN cancels a solicitation prior to opening, MVBCN shall return all offers it received unopened, provided the offers were submitted in a hard copy format with a clearly visible return address. If there is no return address on the envelope, MVBCN shall open the offer to determine the source and then return it. For electronic offers, MVBCN shall delete the offers from MVBCN's information technology system.
- (2) **After Opening.** If MVBCN cancels a procurement or solicitation after opening, MVBCN:
 - a. May return offers in accordance with ORS 279B.060(6)(c); and
 - b. Shall keep records of the cancellation actions in the procurement file.
- (3) If MVBCN rejects all offers, MVBCN shall retain the offers as part of MVBCN's solicitation file.

LEGAL REMEDIES

20-0700 Protests and Judicial Review of Special Procurements

- (1) **Purpose.** An affected person may protest the approval of or the request for approval of a special procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval or request for approval of a special procurement, an affected person must file a written protest with the contract review board or designee and exhaust all administrative remedies.
- (2) **Delivery.**
 - a. Protest of request for approval of a special procurement. An affected person must deliver a written protest to the contract review board or designee within seven (7) days after the first date of public notice of a proposed special procurement, unless a different protest period is provided in the public notice of the proposed special procurement.
 - b. Protest of approval of a special procurement. Notwithstanding the requirements for filing a writ of review under ORS Chapter 34 pursuant to ORS 279B.400(4)(a), an affected person must deliver a written protest to the contract review board or designee within seven (7) days after the first date of public notice of the approval of a special procurement by the contract review board or designee, unless a different protest period is provided in the public notice of the approval of the special procurement.
- (3) **Content of Protest.** The written protest must include:

- a. A detailed statement of the legal and factual grounds for the protest;
 - b. A description of the resulting harm to the affected person; and
 - c. The relief requested.
- (4) **Contract Review Board Response.**
- a. Protest of request for approval of a special procurement: The contract review board or designee shall not consider an affected person's protest of MVBCN's request for approval of a special procurement submitted after the timeline established for submitting a protest under this rule or under the different time period as may be provided in the public notice of the request for approval of a proposed special procurement. The contract review board or designee shall issue a written disposition of the protest in a timely manner. If the contract review board or designee 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 deny the request for approval of the special procurement.
 - b. Protest of approval of a special procurement. The contract review board or designee shall not consider an affected person's protest of the approval of a special procurement submitted after the timeline established for submitting such protest under this rule or under the different time period as may be provided in the public notice of the approval of a special procurement. The contract review board or designee shall issue a written disposition of the protest in a timely manner. If the contract review board or designee 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.
- (5) **Judicial Review.** An affected person may not seek judicial review of the contract review board's or designee denial of a protest of a request for approval of a special procurement. An affected person may seek judicial review of the contract review board's or designee's decision relating to a protest of the approval of a special procurement in accordance with ORS 279B.400.

20-0710 Protests and Judicial Review of Sole Source Procurements

- (1) **Purpose.** For sole-source procurements requiring public notice under Section 20-0275, an affected person may protest the determination of the contract review board 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 person must file a written protest with the contract review board or designee and exhaust all administrative remedies.
- (2) **Delivery.** Unless otherwise specified in the public notice of the sole-source procurement, an offeror must deliver a written protest to the contract review board 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.
- (3) **Content of Protest.** The written protest must include:
 - a. A detailed statement of the legal and factual grounds for the protest;
 - b. A description of the resulting harm to the affected person; and
 - c. The relief requested.
- (4) **Contract Review Board Response.** The contract review board or designee shall not consider an affected person'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 contract review board or designee shall issue a written disposition of the protest in a timely manner. If the contract review board or designee upholds the protest, in whole or in part, MVBCN shall not enter into a sole-source contract.
- (5) **Judicial Review.** Judicial review of the contract review board's or designee's disposition of a sole source procurement protest shall be in accordance with ORS 279B.420.

20-0720 Protests and Judicial Review of Multi-tiered and Multi-step Solicitations

- (1) **Purpose.** 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 MVBCN and exhaust all administrative remedies.

- (2) **Basis for Protest.** An affected offeror may protest its exclusion from a tier or step of competition only if the offeror is a responsible offeror and submitted a responsive offer and, but for MVBCN'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 MVBCN committed a substantial violation of a provision in the solicitation document or of an applicable procurement rule, and the protesting offeror was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.)
- (3) **Delivery.** Unless otherwise specified in the solicitation document, an affected offeror must deliver a written protest to MVBCN within seven (7) days after issuance of the notice of the competitive range or notice of subsequent tiers or steps.
- (4) **Content of Protest.** The affected offeror's protest shall be in writing and must specify the grounds upon which the protest is based.
- (5) **MVBCN Response.** MVBCN shall not consider an affected offeror's multi-tiered or multi-step 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. MVBCN shall issue a written disposition of the protest in a timely manner. If MVBCN upholds the protest, in whole or in part, MVBCN may in its sole discretion either issue an addendum under Section 20-0430 reflecting its disposition or cancel the procurement or solicitation under Section 20-0660.
- (6) **Judicial Review.** Judicial review of MVBCN's decision relating to a multi-tiered or multi-step solicitation protest shall be in accordance with ORS 279B.420.

20-0730 Protests and Judicial Review of Solicitations

- (1) **Purpose.**
 - a. 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 ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective offeror must file a written protest with MVBCN and exhaust all administrative remedies.
 - b. Contract-specific special procurements. Notwithstanding section 1(a) of this rule, a person may not protest, challenge, or review a contract-specific special procurement except upon the occurrence of the conditions set forth ORS 279B.405(2).
- (2) **Delivery.** Unless otherwise specified in the solicitation document, a prospective offeror must deliver a written protest to MVBCN not less than ten (10) days prior to closing.
- (3) **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 shall remedy the conditions upon which the prospective offeror based its protest.
- (4) **MVBCN Response.** MVBCN 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. MVBCN shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). MVBCN shall issue a written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If MVBCN upholds the protest, in whole or in part, MVBCN may in its sole discretion either issue an Addendum reflecting its disposition under Section 20-0430 or cancel the procurement or solicitation under Section 20-0660.

- (5) **Extension of Closing.** If MVBCN receives a protest from a prospective offeror in accordance with this rule, MVBCN may extend closing if MVBCN determines an extension is necessary to consider and respond to the protest.
- (6) **Clarification.** Prior to the deadline for submitting a protest, a prospective offeror may request that MVBCN clarify any provision of the solicitation document. MVBCN's clarification to an offeror, whether orally or in writing, does not change the solicitation document and is not binding on MVBCN unless MVBCN amends the solicitation document by addendum.
- (7) **Judicial Review.** Judicial review of MVBCN's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

20-0740 Protests and Judicial Review of Contract Award

- (1) **Purpose.** An offeror may protest the award of a contract, or the intent to award 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 MVBCN and exhaust all administrative remedies before seeking judicial review of MVBCN's contract award decision.
- (2) **Delivery.** Unless otherwise specified in the solicitation document, an offeror must deliver a written protest to MVBCN within seven (7) days after issuance of the notice of intent to award the contract.
- (3) **Content of Protest.** An offeror's written protest shall specify the grounds for the protest to be considered by MVBCN pursuant to ORS 279B.410(2).
- (4) **MVBCN Response.** MVBCN 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. MVBCN shall issue a written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If MVBCN upholds the protest, in whole or in part, MVBCN may in its sole discretion either award the contract to the successful protestor or cancel the procurement or solicitation.
- (5) **Judicial Review.** Judicial review of MVBCN's decision relating to a contract award protest shall be in accordance with ORS 279B.415.

20-0750 Judicial Review of Other Violations

Any violation of ORS Chapter 279A or 279B by MVBCN for which no judicial remedy is otherwise provided in the public contracting code is subject to judicial review as set forth in ORS 279B.420.

20-0760 Review of Prequalification and Debarment Decisions

Review of MVBCN's prequalification and debarment decisions shall be as set forth in ORS 279B.425.

20-0800 Contract Amendments

- (1) **Additional Goods or Services.** MVBCN may amend a contract without additional competition in any of the following circumstances:
 - a. MVBCN may amend a contract without additional competition to add additional goods or services within the scope of the solicitation document, the sole-source notice or the contract, or the approval of special procurement in that order. An amendment is not within the scope of the procurement if MVBCN determines that the changes to be made by amendment had been described in the procurement documents, it would likely have increased competition or affected award of the contract.
 - b. These Rules otherwise permit MVBCN to award a contract without competition for the goods or services to be procured under the amendment.
 - c. The amendment is necessary to comply with a change in law that affects performance of the contract.

- d. The amendment results from renegotiation of the terms and conditions, including the contract price, of a contract and the amendment is advantageous to MVBCN, all subject to the following conditions:
 - i. The goods or services to be provided are within the scope of the Procurement and the unamended contract.
 - ii. MVBCN determines that, with all things considered, the amended contract is at least as favorable to MVBCN as the unamended contract.
 - iii. The amended contract does not have a total term greater than allowed in the solicitation document, sole source notice, 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.
- (2) **Small or Intermediate Contract.** MVBCN may amend a contract awarded as small or intermediate procurement pursuant to Section 1 of this rule, provided also the total increase in contract price does not exceed the amount set forth in Section 20-0265 for small procurements and Section 20-0270 for intermediate procurements.
- (3) **Price Agreements.** MVBCN may amend a price agreement as follows:
 - a. As permitted by the price agreement;
 - b. If the circumstances set forth in ORS 279B.140(2) exist; or
 - c. As permitted by applicable law.

20-870 Termination of Price Agreements

- (1) **Price Agreements.** MVBCN may terminate a price agreement as follows:
 - a. As permitted by the price agreement;
 - b. If the circumstances set forth in ORS 279B.140(2) exist; or
 - c. As permitted by applicable law.

Section 30 (Reserved)

Section 40 (Reserved)

Section 50 Other

GENERAL EXEMPTIONS AND CLASS SPECIAL PROCUREMENTS

50-0010 General Exemptions

Contracts that are exempt from the competitive process are those listed in ORS 279A.025(2) as well as Personal Service Contracts less than \$75,000.

50-0020 Acute Inpatient Hospital Psychiatric Care Services

MVBCN may enter into contracts for acute inpatient hospital psychiatric care services without a competitive process. These are services provided in a psychiatric hospital with 24-hour medical supervision for a condition, diagnosis, or illness with a sudden onset and that is of short duration

50-0050 Copyrighted Materials

MVBCN may purchase copyrighted materials without a competitive process if there is only one known supplier. MVBCN may specify a copyrighted product. This exemption does not include patented or trademark material.

50-0060 Library System Materials

MVBCN may purchase library circulation materials without a competitive process. MVBCN may purchase subscriptions for periodicals, including journals, magazines, and similar publications, including electronic media without a competitive process.

50-0070 Purchases of Used Personal Property

MVBCN may purchase used personal property without a competitive process, if MVBCN has determined that the direct purchase without a competitive process results in cost savings. Written findings will be made to support such a purchase.

50-0080 Advertising Contracts

MVBCN may purchase advertising and legal notices in newspapers and other publications without a competitive process.

50-0090 Real Property

MVBCN may enter into contracts and lease agreements for office space without a competitive process.

50-0110 Insurance Contracts

MVBCN may enter into contracts for insurance services and/or coverage without a competitive process.

50-0120 Attorney Contracts

MVBCN may enter into contracts for retaining legal counsel without a competitive process.

50-0125 Financial Auditor Contracts

MVBCN may enter into contracts for services to conduct financial audits without a competitive process.

50-0130 Price Regulated Items ORS 279A.025(2)(g)

MVBCN may purchase goods or services without a competitive process when the rate or price is established by federal, state, or other regulatory authority by law or ordinance.

CONTRACT REVIEW PROCEDURES

50-0200 Contract Review and Feasibility Determination / Cost Analysis

- (1) **Generally.** Contracts shall be completed, executed and approved, as required by these Rules, before any Person shall be paid for the provision of Goods or Services or Personal Services to MVBCN.
- (2) **Responsibility.**
 - a. The Executive Director is responsible for ensuring the satisfactory review of all contracts and agreements, intergovernmental agreements, memoranda of understanding, grants, grant applications and proposals, reciprocal services, capital purchase agreements, and other documents reflecting MVBCN commitments, prior to authorization by the Board of Directors or the Executive Director.
 - b. All contracts, except for grant application and proposals, capital purchase agreements, and classroom/training opportunities, shall be approved as to form by MVBCN Legal Counsel.
- (3) **Procedures.**
 - a. All referenced documents in subsection (2) above will be routed to the Executive Director or designee to coordinate the contract review process. Any questions or problem resolution will be coordinated through the Executive Director or designee.
 - i. Contracts not using and/or meeting standard MVBCN indemnification language and/or insurance requirements will require review by MVBCN's insurance agent and/or legal counsel.
 - b. The Board or Executive Director may direct legal counsel to prepare contracts and documents outside of the contract review process for unique and specialized matters.
- (4) The Executive Director is responsible for ensuring the establishment of procedures and guidelines for the contract review process for MVBCN.
- (5) Feasibility determinations or cost analysis required under Section 20-0110 will require the review and approval of MVBCN's Contracts Officer or designee. The Executive Director is delegated the responsibility to establish procedures and guidelines for the feasibility determination/cost analysis required under Section 20 of these Rules.

50-0300 Qualified Rehabilitation Facility Program

- (1) **Definitions.**
 - a. Department: The Oregon Department of Administrative Services.
 - b. Direct labor: All work required for preparation, processing and packing, but not supervision, administration, inspection and shipping.
 - c. Disabled individual: An individual who, because of the nature of disabilities, is not able to participate fully in competitive employment, and for whom specialized employment opportunities must be provided.
 - d. Public agency or public contracting agency: The same meaning contained in ORS 279.835.
 - e. Qualified non-profit agency for disabled individual: A non-profit activity center or rehabilitation facility:
 - i. Organized under the laws of the United States or of this state and operated in the interest of disabled individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;
 - ii. That complies with any applicable occupational health and safety standard required by the laws of the United States or of this state; and

- iii. That in the manufacture of products and in the provision of services, whether or not the products or services are procured under 279.835 to 279.855, during the fiscal year employs disabled individuals for not less than 75 percent of the work hours of direct labor required for the manufacture or provision of the products or services.
- (2) **Policy.** ORS 279.835 through 279.855 rules were not repealed on March 1, 2005. The purpose of these rules is to encourage and assist disabled individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for sheltered workshop and activity center products and services, thereby enhancing its dignity and capacity for self-support and minimizing its dependence on welfare and need for costly institutionalization.
- (3) It is the responsibility of the State of Oregon Department of Administrative Services (DAS) to:
 - a. Determine the price of all products manufactured and all services offered for sale to public agencies by a qualified non-profit agency for disabled individuals.
 - b. Establish and publish a list of sources and potential sources of products produced by any qualified non-profit agency for disabled individuals.
- (4) If MVBCN intends to procure any product or service on the procurement list prepared by DAS, MVBCN will procure such product or service, at the price established by DAS, from a qualified non-profit agency for disabled individuals provided the product or service is of the appropriate specifications and is available within in the period required by MVBCN.

50-0500 Surplus Personal Property Disposition

- (1) All personal property owned by MVBCN and identified as surplus property shall be turned over to the Executive Director or designee. The Executive Director shall lease or store the property, use the property as a trade for the purchase or acquisition of other personal property, or declare the property to be surplus to MVBCN needs.
 - a. If the property is declared surplus, the Executive Director or designee shall arrange for the pick up and disposition of the property in accordance with the authority delegated by the Board. If the value of the property exceeds the Executive Director's disposition authority, then the Executive Director shall provide the Board with a recommended disposition and then obtain the Board's approval to carry out the recommended disposition.
 - b. If the property is to be used as a trade for purchase or acquisition of other personal property for an amount in excess of the Executive Director's disposition authority, the Executive Director must obtain authorization from the Board prior to the purchase or acquisition of new equipment.
- (2) No MVBCN employee directly responsible for the storage, sale, or disposition of surplus property shall obtain or authorize purchase of said property unless specifically authorized by the Board.

50-0700 False Claims Act – Prohibiting Medicaid Fraud, Waste and Abuse

MVBCN will ensure that all contracts entered into with contractors, subcontractors and/or agents providing Medicaid health care goods or services shall include language provisions certifying compliance if subject to Section 6032, Deficit Reduction Act 2005.

50-0800 Health Insurance Portability and Accountability Act

MVBCN shall ensure that all contracts subject to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 USC 1320d -1320d-8, PL 104-191, sec. 262 & sec. 264, as it may be amended from time to time, contain appropriate contract provisions to meet HIPAA requirements.