

**DAS Statewide Policy**

**SUBJECT:** MWESB Procurement

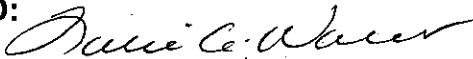
**NUMBER:**

**107-009-030**

**DIVISION:** State Services Division  
State Procurement Office

**EFFECTIVE DATE:** November 4, 2005

**APPROVED:**



**POLICY/  
PURPOSE:**

This Policy provides guidance and direction to state agencies subject to the authority of the Department of Administrative Services (DAS) (Agencies) on Procurements with Minority, Women, and Emerging Small Businesses (MWESBs). Agencies must comply with Oregon Chapter Law 351, 2005, amending ORS 200.035 (ORS 200.035), providing Notice to the Governor's Advocate for MWESBs. This Policy guides and directs Agencies on how to provide this Notice through the Oregon Procurement Information Network (ORPIN). The goal of this Policy is to expand opportunities for minority, women and emerging small businesses in Oregon by the following:

- Including Providers (vendors) wishing to do business with the state in any and all applicable contract areas without regard for gender, race, ethnic origin, religion, social class, or other affiliation, and
- Developing a business climate in Oregon where inclusiveness and open, honest business practices are recognized as a core value at all levels of state government.

This Policy includes:

- I. Options for Notice to the Governor's Advocate;
- II. Intermediate Procurement for Supplies and Services from \$5,000 to \$150,000: Inclusive Competition;
- III. Formal Procurements for Supplies and Services Exceeding \$150,000: Notified Competition;
- IV. Sole-Source Procurements for Supplies and Services;
- V. Special Procurements for Supplies and Services;
- VI. Emergency Procurements for Supplies and Services, A&E, and Public Improvements;
- VII. Direct Selection and Informal Selection Procurements for A&E;
- VIII. Competitive Quotes Procurements for Public Improvements;
- IX. General: Timely and Qualified Responsiveness of the Provider;
- X. General: Responsible Evaluation and Rejection by the Agency;
- XI. General: Awards; and
- XII. General: Remedies and Revocation.

This Policy is set forth in the Guidelines below.

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- AUTHORITY:** Oregon Revised Statutes (ORS) 279A.140 and 279A.100; Oregon Administrative Rules (OAR) 125-246-0200
- APPLICABILITY:** All State agencies subject to the procurement authority of the Department of Administrative Services (DAS) in accordance with ORS 279A.140.
- ATTACHMENTS:** None
- DEFINITIONS:** The definitions of OAR 125-246-0110 are incorporated by reference in this Policy.
- "A & E Provider"** means collectively or in the alternative, the Consultant, Contractor, or supplier, providing A & E Services, as defined in this Policy.
- "A & E Services"** means Architectural, Engineering and Land Surveying and Related Services, as defined in ORS 279C.100, ORS 279C.100(6), and OAR 125-246-0110(11).
- "Advocate's Office"** means the "Governor's Advocate" as defined below.
- "Agency,"** for purposes of this Policy, means those Authorized Agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department pursuant to ORS 279A.050 and 279A.140 and with delegated authority pursuant to OAR 125-246-0170. This term includes the Department when the Department is engaged in Public Contracting. Nothing in this definition or the use of this term in these Rules conveys any authority to an Agency. An Agency is authorized only through a delegation of authority pursuant to OAR 125-246-0170.
- "DAS"** means the Department of Administrative Services of the State of Oregon.
- "DCBS"** means the Department of Consumer and Business Services of the State of Oregon.
- The **"Governor's Advocate"** means the Governor's Advocate for Minority, Women, and Emerging Small Business. "Governor's Advocate" means the Director of the Advocate's Office within the Office of the Governor (not the Department of Consumer and Business Services, DCBS).
- "Intent to Respond"** means an optional process described in Section X of this Policy, whereby an Agency may elect to provide to Certified MWESBs

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DEFINITIONS (Continued)

and other Providers a timed opportunity to state their intention to respond and to delay alternative methods of solicitation, as set forth in this Policy.

**"Invite"** or **"Invitation"** means the specific ORPIN process whereby an Agency's Invitation to Providers through ORPIN is limited in accordance with the informal process, and only those Providers on the Invitation list will be able to see the opportunity. Buyers may accept responses in the form of Quotes, Bids or Proposals from additional Providers (vendors) when it is in the best interest of the State or Agency to do so. The Invitation ORPIN process is different from a Notification ORPIN process (see "Notify" below).

**"Methods of ORPIN Solicitation"** include:

- (a) The Invitation ORPIN process (see "Invite" above) and
- (b) The Notification ORPIN process (see "Notify" below).

A **"Mixed"** or **"Balanced Solicitation"** means the solicited Providers do not represent one race, gender, or group of MWESBs or non-MWESBs.

"Mixed" or "Balanced" refers to various combinations of Providers representing races, genders, MWESBs and non-MWESBs. This definition does not create a presumption that the absence of a Mixed or Balanced Solicitation, alone, indicates a race or gender preference.

**"MWESBs"** means, for purposes of this Policy, Qualified Minority, Women, and Emerging Small Businesses that are Certified by OMWESB and listed in the DCBS database.

**"Normal Practice"** means an Agency's historical procurement behavior, evidenced by Solicitations and Awards. This behavior may be supported by an Agency's internal policy or informally by word of mouth or structural systems. For examples regarding Intermediate Procurements for Supplies and Services: (a) an Agency's Normal Practice may have been to solicit only three verbal Quotes or (b) an Agency's Normal Practice may have been to Notify Providers on an Electronic System. The term, "Normal Practice," includes those adjustments in procurement behavior required by changes in the ORS, OAR, or DAS Policies, including this Policy.

**"Notify"** or **"Notification"** means the specific ORPIN process whereby an Agency sends Notification to specific Providers through ORPIN and posts the opportunity for the global market, when it is released. All Providers may respond to the opportunity posted on ORPIN. The Notification ORPIN process is different from an Invitation ORPIN process (see "Invite" above).

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**"OMWESB"** means the Office of Minority, Women and Emerging Small Businesses, located at DCBS.

**"Provider"** for purposes of this Policy, means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services, A & E Services, or Public Improvements. This Policy definition includes A & E Services.

**"Qualified"** means certified by OMWESB and listed by the DCBS to provide to the Agency the desired Supplies and Services; A & E Services; or Public Improvements.

**"SPO"** means the State Procurement Office of the State Services Division of DAS.

**"Supplies and Services"** includes **"Supplies or Services,"** and collectively means Goods, Trade Services, and Personal Services, separately or in any combination of these terms as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and B. This term does not include Construction Services or Architectural, Engineering and Land Surveying Services and Related Services, governed under ORS 279C.

**GUIDELINES:**

**I. Options for Notice to the Governor's Advocate**

- A. ORS 200.035 requires the Agency to provide timely notice and information of all Solicitations in excess of \$5,000 to the Governor's Advocate.
- B. If the Agency uses ORPIN in accordance with all applicable provisions of this Policy, the requirements of ORS 200.035 are satisfied. Alternatively, Agencies may satisfy ORS 200.035 by complying with an option described in section I.C below.
- C. An Agency may communicate directly with the Governor's Advocate, who may authorize a different process for a specific Procurement or Agency. The Agency must still comply with ORPIN Policy No. 125-009-020. Agencies are referred to the Governor's Advocate for detailed descriptions of any available, alternative options.

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**GUIDELINES (Continued)**

**II. Intermediate Procurements for Supplies and Services from \$5,000 to \$150,000:  
Inclusive Competition**

- A. **Quotes, Bids or Proposals (Offers).** For Intermediate Procurements, ORS 279B.070(2) requires an Agency to seek at least three informally solicited competitive price quotes or competitive proposals. OAR 125-247-0270 addresses the informal Solicitation of Quotes, Bids, or Proposals (Offers), using ORPIN. Prior to soliciting an Intermediate Procurement, an Agency must determine a reasonable and sufficient Number of Offers, based upon its needs, and Normal Practice, as adjusted to satisfy the requirements of the ORS, the OAR and this Policy (Number of Offers). For examples, see the Commentary on Section II.A.-B. at the end of this Policy.
- B. **Ethics.** In determining the Number of Offers pursuant to Section II.A., Agencies must not develop Specifications, a Normal Practice, or change thereto, that inhibits or tends to discourage Public Contracting with MWESBs pursuant to this Policy.
- C. **Records.** The Agency's determination of the Number of Offers pursuant to Section II.A. must be documented. The Agency must document its development and changes, if any, of its Normal Practice for legitimate business reasons. The Agency may determine whether to document in policy, procedures, or Procurement Files. The determinations and documentations described in Sections II. A-C. must be available for review on request by the Governor's Advocate and SPO.
- D. **Time Period.** This Policy does not prescribe one time period for an Intermediate Procurement, commencing on the first day of Notice and ending with the Agency's Award of a Contract (Time Period). The following conditions apply:
1. Agencies must provide a reasonable and sufficient Time Period in order to meet the objectives of ORS 200.035 (Objectives). When an Agency selects a Time Period for a Procurement, the Agency must provide enough time during the work week for all new Providers to obtain relevant information and meaningful assistance in order to compete with any incumbent, established, or highly-resourced competitors in that Procurement.
  2. Agencies may adjust the Time Period to account for the type of Procurement and needs of the Agencies, so long as the Objectives are not undermined.
  3. The Governor's Advocate may determine that an Agency's Time Period is unreasonable or insufficient to satisfy the Objectives, and

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**GUIDELINES (Continued)**

- a. Revoke, in whole or in part, an Agency's right to provide notice to the Advocate's Office pursuant to this Policy;
- b. Require a notice process to the Advocate's Office different from this Policy; or
- c. Any combination of subsections 3.a. and b.

**E. Inclusive Invitation or Notification.**

1. **Process.** If a Solicitation exceeds \$5,000 but is not greater than \$150,000, the Agency must use ORPIN and choose one of the following processes:
  - a. **Inclusive Invitation.** Subject to the availability of MWESBs within a category, the Agency Invites a Number of Offers and strives for a Mixed or Balanced Solicitation. A Mixed or Balanced Solicitation indicates neutrality. Neutrality may also result in the absence of a Mixed or Balanced Solicitation, based upon a lack of Provider availability or other bona fide reason; or
  - b. **Inclusive Notification.** The Agency Notifies all Providers in the global market, including MWESBs (see Section 2).
2. **ORPIN and DCBS Databases.** Until the State Procurement Office announces that ORPIN and the DCBS databases are integrated, Agencies must utilize ORPIN and the DCBS database for processes of this subsection E.1.a and E.1.b. After this integration, Agencies may use only ORPIN.
3. **Preference.** The Inclusive Invitation is the preferred process.

**F. Revision of Invitations.** Good reason may arise to revise the Invitations. The Agency may make revisions to Invite different Providers.

**G. Notification.** An Agency may begin with an Invitation process described in subsection E.1.a. and elect to change to a Notification process described in subsection E.1.b.

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**GUIDELINES (Continued)**

**III. Formal Procurements for Supplies and Services Exceeding \$150,000: Notified Competition**

If a Solicitation exceeds \$150,000, SPO or its delegatee through OAR 125-246-0170 must Notify all Providers in the global market through ORPIN.

**IV. Sole-Source Procurements for Supplies and Services**

A Sole-Source Procurement is a noncompetitive process, based upon a determination that only one Qualified Provider exists. This Section IV contains no special requirement for a Sole-Source Procurement to satisfy ORS 200.035 except that Agencies must comply with ORS 279A, ORS 279B.075 and OAR 125-247-0275, including, but not limited to:

- A. For all Contracts exceeding \$5,000, the Agency must place a public notice of the determination on ORPIN for a time period required under OAR 125-247-0275; and
- B. For all Contracts exceeding \$75,000, the written approval of the Chief Procurement Officer or delegatee of SPO is required before any Award. For Contracts up to \$75,000, Agencies should follow their internal policies for approvals.

**V. Special Procurements for Supplies and Services**

- A. For competitive Special Procurements only, Agencies must comply with the processes and conditions contained in Sections I and II of this Policy, according to the respective amount of the Contract(s).
- B. Agencies must also comply with ORS 279A, ORS 279B.085 and OAR 125-247-0285 through 125-247-0288.
- C. Sections I and II of this Policy do not apply to amendments or extensions of Special Procurements, renegotiations, or noncompetitive Special Procurements.
- D. Special Procurements do not waive ORS 200.035.

**VI. Emergency Procurements for Supplies and Services, A&E, and Public Improvements**

- A. Agencies are encouraged to Invite Qualified, Certified MWESBs whenever the Agency determines that the level of the emergency makes competition practicable under the circumstances. If the Agency determines that competition is practicable pursuant to OAR 125-247-0280(3)(b), the Agency is urged to use the process described in Section II.E.1.a. above \$5,000 and not exceeding \$150,000.

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- B. Agencies must comply with ORS 279A, ORS 279B.080; ORS 279C.110, ORS 279C.115, ORS 279C.335(5), ORS 279C.380(4); OAR 125-247-0280, OAR 125-248-0200(1)(a), and OAR 125-249-0150, as applicable. For Supplies and Services, the requirements of OAR 125-247-0280 include but are not limited to: a written declaration of emergency, a record of measures taken to encourage competition if practicable under the circumstances, and a summary of the contract above \$5,000 reported on ORPIN.

**VII. Direct Selection and Informal Selection Procurements for A & E**

- A. **Direct Selection.** Agencies must comply with ORS 279A, ORS 279C.110, ORS 279C.115, OAR 125-248-0200, and the following conditions:
1. An Emergency Procurement pursuant to OAR 125-248-0200(1)(a) must comply with Section VII of this Policy;
  2. A Procurement where the Estimated Fee to be paid under the Contract does not exceed \$25,000, pursuant to OAR 125-248-0200(1)(b) must either:
    - a. Comply with an agreement with the Governor's Advocate in accordance with Section I.C. of this Policy; or
    - b. Comply with the processes and conditions contained in Sections I and II of this Policy in order to build or maintain an Agency's short list of prequalified A & E Providers for direct selection (see OAR 125-248-0200(2)), **except:**
      - i. The Normal Practice of the Agency described in Section II.A. must satisfy the requirements of the Code and Rule of this Section VII;
      - ii. The Direct Selection must be qualified-based;
      - iii. A single A & E Provider may be Invited;
      - iv. When the Agency foresees making more than one Direct Selection over a period of time, the Agency must strive for a Mixed or Balanced series of Direct Selections, cumulatively. A Mixed or Balanced series of Direct Selections indicate neutrality. Neutrality may also result in the absence of a Mixed or Balanced series of Direct Selections, based upon a lack of A & E Provider availability or other bona fide reason; and

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**GUIDELINES (Continued)**

v. A Procurement complying with the procedure and conditions described in OAR 125-248-0200(1)(c) ("Call Back") is exempt from this Policy.

**B. Informal Selection.** For Procurements of Contracts exceeding \$5,000 and up to \$150,000, Agencies must comply with ORS 279A, ORS 279C.110, OAR 125-248-0210, Sections I and II of this Policy, and the following **conditions**:

1. The Normal Practice of the Agency described in Section II.A. must satisfy the requirements of the Code and Rule of this Section VII;
2. The Informal Selection is qualified-based;
3. A minimum of five (5) proposals from A & E Providers must be Invited; and
4. The sources of A&E Providers described in OAR 125-248-0210 also include the global market of ORPIN, which includes MWESBs (see subsection B.5).
5. ORPIN and DCBS Database. Until the State Procurement Office announces that ORPIN and the DCBS database are integrated, Agencies must utilize ORPIN and the DCBS database for processes of this Section. After this integration, Agencies may use only ORPIN.

**VIII Competitive Quotes Procurements for Public Improvements**

Agencies must comply with ORS 279A, OAR 125-249-0160, and Sections I and II of this Policy, except:

- A. Section II applies only to Contracts not exceeding \$100,000 or \$50,000 for highways, bridges and transportation projects (Thresholds for Public Improvements);
- B. The Normal Practice of the Agency described in Section II.A. must satisfy the requirements of the Code and related Rule of this Section VIII.
- C. An Authorized Agency may, in its discretion, waive bid security and performance and payment requirements, if the amount of the Contract for the Public Improvement is less than \$100,000, in accordance with OAR 125-249-0460(5).

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**GUIDELINES (Continued)**

**IX. General: Timely and Qualified Responsiveness of the Provider**

- A. Intermediate, Informal Selection, and Competitive Quotes Procurements, Sections II, VII and VIII.** The Agency must determine a reasonable and sufficient Time Period for Providers to respond to Invitations in accordance with Section II.D. The Agency must inform Invited Providers of any (1) deadline for timely responses to the Invitations; (2) budgetary limitations; (3) target pricing; and (4) requirements for Qualified-Based Selection (QBS) of A&E services, if applicable. The Agency sets the requirements for timely and qualified responses by the Providers. If the process described in Sections II or III does not produce sufficient, timely and qualified responses from Providers, the Agency may Invite or Notify Providers from the open market. The Agency must comply with ORS 279AB, the related Rules, and DAS Policies.
- B. Other Procurements.** Agencies must comply with ORS 279ABC, related Rules, and DAS Policies (Law). The standards in the Law satisfy this Policy.
- C. All Procurements: Intent to Respond.** The Agency, at its discretion, may require Invited or Notified Providers to communicate to the Agency their Intent to Respond to the Invitation or Notification (Process). The Agency determines the prescribed manner of this Process, and the manner may be a verbal or written communication to a contact person, e-mail address, or location. The Agency sets the deadline when all Intents to Respond must be received, so long as the deadline is at least two (2) business days after the Invitation or Notification. If the Agency chooses to require this Process, it must disclose the Process to all Invited or Notified Providers.

**X. General: Responsible Evaluation and Rejection by the Agency**

- A. Intermediate, Informal Selection, and Competitive Quotes Procurements, Sections II, VII and VIII.** The Agency determines how to informally and responsibly evaluate and reject Offers, if appropriate. The Agency must comply with ORS 279AB, the related Rules, and DAS Policies.
- B. Other Procurements.** Agencies must comply with the ORS 279ABC, related Rules, and DAS Policies (Law). The standards in the Law satisfy this Policy.

**XI. General: Awards**

All Awards over \$5,000 must be posted on ORPIN.

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**GUIDELINES (Continued)**

**XII. General: Remedies and Revocation**

**A. Remedies and Revocation.** Agencies must implement this Policy in a manner that meets the objectives of ORS 200.035 (Objectives). If the Governor's Advocate determines that an Agency's implementation is unreasonable or insufficient to satisfy the Objectives, then the Governor's Advocate may:

1. Revoke in whole or in part an Agency's right to provide notice to the Advocate's Office pursuant to this Policy;
2. Require a notice process to the Advocate's Office different from this Policy;  
or
3. Any combination of subsections 1.a. and b.

**B. Modification or Revocation of the Policy.** The Director of the Department of Administrative Services may modify or revoke this Policy at any time.

**COMMENTARY.** The purpose of the following Commentary, like the Commentary to the DAS Public Contracting Rules under OAR 125-246-0100(2), is to assist the Agencies. This Commentary is not Policy or the interpretation of Policy and has no legally binding effect.

**COMMENTARY ON SECTION II.A-B.**

**Normal Practice.** If an Agency has no Normal Practice or wishes to change its Normal Practice, the Agency may develop a Number of Offers and a new Normal Practice as follows:

1. Research the Agency's past practices, changed circumstances, and the new law;
2. Research the market and reasonable Normal Practices of one or more other Agencies;
3. Consider whether the number of Qualified Certified MWESBs in the Pool is sufficient;  
or
4. Develop a decision tree and consider whether the DPO's approval should be required. If the Agency does not develop a Normal Practice, then by default, ORS 279B.070(3) controls.

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**COMMENTARY (Continued)**

**Geography.** If an Agency's Normal Practice is to localize its Procurement and exclude Providers who do not meet geographical requirements, the Agency may continue this practice. The Agency may not localize its Procurement for MWESBs and broaden it for other Providers. The Agency should permit Providers willing to meet the local and other Agency requirements. For example, a Provider of services may be willing to travel and able to work within the locality.

**COMMENTARY ON SECTION VII.**

**Rotating Informal Selections of A & E Providers.** The Agency may have a list of A&E Providers, may need to make multiple Informal Selections from this list of A&E Providers, and may have no way to select among the MWESBs and non-MWESBs on this list. The Agency should rotate its Invitations to these Providers for Mixed or Balanced Informal Selections.