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TITLE	
Procurement and Contracting Policy	
POLICY NUMBER	
FA-05-040	
RESPONSIBLE OFFICER	UNIVERSITY CONTACT
<i>Vice President for Finance & Administration</i>	<i>Procurement and Contracting Management Department</i>
SUMMARY	
This policy outlines requirements, authorizations, and other matters pertaining to procurement and contracting at Western Oregon University	
APPLICABLE TO	
Finance and Administration; Office of the General Counsel; all campus entities or business units engaged in purchasing, contracting, and/or procurement.	
DEFINITIONS	
The following terms have the meaning indicated below when capitalized and used in this Policy. A list of acronyms can be found at the end of this Policy.	

- a. **“Amendment”** means an agreed-upon addition, deletion, correction, or modification of a contract.
- b. **“Applicable Laws”** means all statutes, regulations, rules, ordinances, policies, requirements, and performance standards having the force of law enacted, promulgated, or adopted by any federal, state, or local government charged with governance, regulation, oversight, enforcement, or other jurisdiction with respect to a matter.
- c. **“Award”** means the selection of a Contractor with whom WOU intends to enter into a Contract at the conclusion of a Competitive Process. The term Award may refer to the preliminary conditional selection of the Contractor prior to negotiating a Contract or the final selection of the Contractor after negotiating a Contract.
- d. **“BOLI”** means the Oregon Bureau of Labor and Industries.
- e. **“Budget Authority”** is defined in Subsection 8(a)(i)
- f. **“Buyer”** means a WOU employee who has written authorization from a Budget Authority to make purchases on behalf of their Department.
- g. **“Competitive Process”** means the process of procuring goods or services by fair and open competition with the intent of minimizing opportunities for favoritism and assuring that Contracts are awarded equitably and economically. The Competitive Process includes attempting to obtain offers from Contractors with favorable terms (which may include price, quality, promptness of delivery, and/or service) for the same or substantially similar specifications and requirements. Informal Procurements and Formal Procurements both require the use of a Competitive Process. A Competitive Process must comply with the requirement for quotes for Informal Procurements and ITB and RFP Requirements for Formal Procurements.
- h. **“Contract”** means any form of written agreed-upon terms of purchase or transaction, regardless of what it may be called, for the acquisition of goods and/or services. In certain circumstances described in this Policy, a Contract may include a purchase order, Price Agreement, invoice, receipt, or other similar document.
- i. **“Contract Authority”** is defined in Subsection 8(a)(ii).
- j. **“Contractor”** means an Entity that offers to sell, has agreed to sell, or has been awarded a Contract to sell goods and/or services to WOU.
- k. **“Days”** means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.
- l. **“Department”** means a specific group within WOU with a discrete assigned budget that engages in the purchasing of or contracting for goods and/or services.
- m. **“Direct Procurement”** is defined in Subsection 4(a).
- n. **“Disqualification”** or **“Disqualified”** means a Contractor who is prohibited from contracting with WOU as defined in Subsection 4(d).
- o. **“Emergency”** means an unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, threat to public health or safety, or similar risks that requires prompt action to remedy the condition.
- p. **“Federal Acquisition Regulation”** or **“FAR”** means the federal contract administration requirements established under 48 CFR Part 1 or alternate agency contract administration regulations.

- q.** “**Federally Funded Purchases**” means any purchase or transaction funded, in whole or in part, with federal Grant Funds or federal contract funds which require purchases to comply with Uniform Guidance or FAR specifications.
- r.** “**FERPA**” means the Family Educational Rights and Privacy Act (20 USC § 1232g) and its implementing regulations under 34 CFR Part 99.
- s.** “**Fixed Asset(s)**” means tangible personal property that (i) is not consumed in the normal course of business; (ii) has a unit value of \$5,000 or more; and (iii) has a useful life greater than one year. For reference libraries and audio-visual departments, Fixed Assets include books, periodicals, and reference materials, regardless of value.
- t.** “**Formal Procurement**” is defined in Subsection 4(c).
- u.** “**Grant Funds**” means funds received by WOU for the purpose of supporting or stimulating a program or activity, and subject to certain conditions as outlined in an agreement between the grantor and WOU. Grant funds may include federal, state, or local government financial assistance characterized as a grant by Applicable Laws.
- v.** “**Informal Procurement**” is defined in Subsection 4(b).
- w.** “**Invitation to Bid**” or “**ITB**” is defined in Subsection 4(c)(2).
- x.** “**Price Agreements**” is defined in Subsection 4(g).
- y.** “**Primary Employee**” means (i) an executive of a Contractor, (i) employee of a Contractor that signs a bid, or an employee of the Contractor who is essential to carrying out the work of a Contract and such employee’s supervisors.
- z.** “**Procurement Card**” or “**P-Card**” means a WOU credit card issued to WOU Departments.
- aa.** “**Procurement Method**” refers to the procurement methods used by WOU. Direct, Informal, and Formal, as outlined in Subsection 4.
- bb.** “**Procurement Policies and Procedures**” include this Procurement Policy as well as any other relevant WOU policy or procedure.
- cc.** “**Procurement Process**” refers to the process of negotiating, approving, or making decisions regarding the purchasing or obtaining of goods and/or services for WOU use as outlined in this Policy.
- dd.** “**Procurement Threshold**” means a set of Procurement Value thresholds to determine which Procurement Method applies. Departments may not divide a single project, purchase, or transaction into more than one project, purchase, or transaction for the purpose of meeting a lower Procurement Threshold.
- ee.** “**Procurement Value**” or “**Contract Value**” means WOU’s maximum financial obligation to a single Contractor for any purchase or transaction. The Procurement Value includes all reasonably foreseeable amounts that WOU can be obligated to incur to a single Contractor in connection with a single project, purchase, or transaction including a Contract and any addenda, unilateral options, approved alternates, bonuses, incentives, contingency amounts, recurring amounts, and other amounts. The Contract Value includes all goods and/or services (including phases of services) known or reasonably anticipated at the time of Award, even if such phases are anticipatory or contingent on other factors.
- ff.** “**Request for Proposal**” or “**RFP**” is defined in Subsection 4(c).

gg. “**Retainer Contract(s)**” means a Contract under which a Contractor may provide goods and/or services for WOU as described in Subsection 4.

hh. “**Sole Source**” means a circumstance when only one Contractor is able to provide suitable goods and/or services, including when only one Contractor can meet critical parameters or timeframes required to meet WOU’s needs. See Subsection 4(f)(vi) for additional details.

ii. “**Solicitation Document**” means a document used for Formal Procurements. The Solicitation Document requests offers to provide goods and/or services from two or more qualified Contractors through a public notice.

jj. “**Specifications**” means a description of the physical, functional, or performance characteristics, or of the nature of the goods and/or services, including any requirement to be satisfied by a product, material, or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied.

“**Uniform Guidance**” means the federal grant administration requirements established under 2 CFR Part 200 or alternate agency grant administration regulations.

ACRONYMS

Acronyms	Definition
ABS	Accounting and Business Services
CFR	Code of Federal Regulations
CH	Card Holder/Custodian
CM	Construction Manager
DocStar	Electronic data storage system
GC	General Contractor
IRS	Internal Revenue Service
ITB	Invitation to Bid
MWESB	Minority, Women, and Emerging Small Business
NTE	Not to Exceed
OAR	Oregon Administrative Rules
OGC	Office of General Counsel
ORS	Oregon Revised Statute
PA	Program Administrator
CP	Contracting and Procurement Department
P-Card	Procurement Card
PCR	P-Card Reconciliation
PERS	Public Employees Retirement System

	PSC	Personal Service Contract	
	RFP	Request for Proposal	
	SaaS	Software as a Service	
	SBITA	Subscription Based Information Technology Agreements	
	SPO	Sponsored Projects Office	
	UCS	University Computing Services	
	VPFA	Vice President of Finance and Administration	
	WOU	Western Oregon University	

AUTHORITY
STATEMENT OF AUTHORITY

1. PROCUREMENT PROCESS ROLES AND RESPONSIBILITIES

The Procurement and Contracting Management Department (“**PCM Department**”) administers WOU’s Procurement Processes and provides support to all Departments in the Procurement Process. The PCM Department’s responsibilities include the following:

- a. Policy and Procedure Management.** The PCM Department drafts, maintains, and updates Procurement Policies and Procedures related to the Procurement Process. The PCM Department updates Procurement Policies and Procedures and related documents to ensure continued compliance with Applicable Laws and consistency with sound business practices. The PCM Department shall prepare, maintain, and update templates, forms, and checklists with additional detail regarding the Procurement Process, including considerations, responsible parties for each step, and required approvals. The PCM Department also approves Cooperative Agreements.
- b. Support and Oversight.** All WOU employees and Departments are responsible for complying with applicable Procurement Processes, including Procurement Policies and Procedures and Applicable Laws. When required or advisable as explained in Subsection 4 of this Policy, the PCM Department will supervise or assist Departments in fulfilling any part of the Procurement Process, including, but not limited to, Competitive Process requirements, reviewing documentation, negotiating Contracts, and approving purchases or transactions as required by the Procurement Policies and Procedures and Applicable Laws.
- c. Compliance.** Although WOU Departments are each responsible for compliance with Procurement Policies and Procedures, Applicable Laws, and good business practices, the PCM Department is responsible for and has authority to monitor and review the procurement activities of WOU employees and Department and to enforce WOU’s Procurement Policies and Procedures. The PCM Department is authorized to establish procedures processes to ensure compliance with Procurement Policies and Procedures, Applicable Laws, and good business practices. The PCM Department shall maintain compliance checklists and other documents detailing procurement requirements, best practices, and enforcement procedures, including audits and other compliance processes. Non-compliance with this policy may be reported to PCM, the Office of General Counsel, or via the FRAUD, WASTE & ABUSE HOTLINE 1-855-375-6726. The Office of General Counsel – in conjunction with PCM – will determine if this Policy or any related policy has been violated and may refer the matter to the Office of Human Resources for further investigation and possible discipline.

2. REQUIRED PROCUREMENT PROCESS STEPS

The Procurement Process refers to the process of negotiating, evaluating, approving, documenting, and making decisions regarding the purchase or obtaining of goods and/or services for WOU. **Departments purchasing goods and/or services are responsible for ensuring that every purchase or transaction satisfies all of the steps of the Procurement Process listed below.** These steps will require a greater or lesser amount of formality, documentation, competitive bidding, consultation with stakeholders, and time depending on the type of good or service purchased or obtained, the amount of money involved, the source of funds for the purchase or transaction, and other considerations.

- a. Business Purpose and Needs.** A review of the business purpose and needs (also known as programmatic review) of the proposed purchase or transaction includes confirming that it has a business purpose that supports the Department’s objectives and WOU’s mission. For some purchases or transactions, it also includes the development of minimum Specifications, an estimated Procurement Value, and other parameters.
- b. Procurement Method.** Each purchase or transaction must be made using the proper applicable Procurement Method and follow all Applicable Laws and Procurement Policies and Procedures. The Procurement Method may include a Competitive Process or an exemption from the Competitive Process. A Competitive Process requires WOU personnel to attempt to obtain offers from an adequate number of Contractors to obtain favorable purchase or transaction terms. Favorable terms may include price, quality,

promptness of delivery, service, and/or other considerations for the same or similar Specifications and requirements. See Section 4 for additional details on Procurement Methods, including Competitive Processes.

c. Office of the General Counsel Review. Certain purchases and transactions must be reviewed and approved by the Office of the General Counsel (“**OGC**”). The purchases and transactions requiring OGC review are listed in separate policies and/or procedures.

d. Budget Authority Approval. Every purchase or transaction must be approved by the Department’s Budget Authority or, if applicable, Buyer. See Section 8 for additional details.

e. Contract Authority Approval. Every purchase or transaction must be approved by a Contract Authority. See Section 8 for additional details.

f. Written Contract Agreement. Every WOU purchase or transaction must be made and documented using the proper form of Contract. See Section 9 for additional details.

g. Payment. Payment involves determining the appropriate method to make a payment for the proposed purchase or transaction and processing the payment in accordance with Applicable Laws and WOU policies and procedures. See Section 10 for additional details.

viii. Ongoing Contract Management. Ongoing Contract management refers to each Department’s monitoring and providing administrative oversight of its Contracts to ensure their purchases or and transactions is are performed to completion pursuant to the terms of the Contracts. See Section 11 for additional details.

3. OVERVIEW OF PROCUREMENT METHODS.

(a) **Best Value.** WOU’s Procurement Methods are intended to encourage Departments to select Contractors based on the best value for Department needs. The concept of Best Value means that WOU can consider factors other than price when making decisions. Although Departments must be sensitive to prices, Departments can consider other costs or values, such as warranties, performance, quality, life cycle costs, costs of ownership, costs of acquisition, cost of termination or disposal, sustainability attributes, training, and shipping, among others.

(b) **Overview; Non-Federally Funded Purchases.** A purchase’s or transaction’s Procurement Value and corresponding Procurement Threshold is the primary factor for determining the appropriate Procurement Method. The three Procurement Methods and their respective Procurement Thresholds are as follows:

- i) Direct Procurement: Procurement Value up to \$25,000;
- ii. Informal Procurement: Procurement Value over \$25,000 and up to \$250,000; and
- iii. Formal Procurement: Procurement Value over \$250,000.

(c) **Federally Funded Purchases.** Federally Funded Purchases are usually subject to Procurement Thresholds that have different Procurement Values. Their Procurement Methods will also differ from the WOU’s standard Procurement Methods. At the time of this policy’s adoption, the Uniform Guidance’s and FAR’s Procurement Methods and Procurement Thresholds are found in 2 CFR Part 200 and 48 CFR Part 2 and are as follows:

- i. Informal Procurement Methods

- A. Micro-Purchase Procurement: Procurement Value up to \$10,000
- B. Small Purchase Procurement: Procurement Value over \$10,000 up to \$250,000

ii. Formal Procurement Methods

- A. Sealed Bids Procurement: Federally specified circumstances above the Small Purchase Procurement Threshold
- B. Proposals Procurement: Federally specified circumstances above the Small Purchase Procurement Threshold

These Uniform Guidance and FAR Procurement Thresholds are adjusted from time to time based on inflation or agency actions. WOU's Procurement Thresholds for Federally Funded Purchases will automatically adjust in accordance with any federal adjustments.

- (d) **Other Required Procurement Processes.** Notwithstanding the Procurement Methods described above and throughout this Policy, if the source of funding for a procurement requires a different Procurement Method, WOU may comply with the required alternative Procurement Method to the extent permissible under Applicable Laws.
- (e) **Determining Procurement Value.** The Procurement Value is determined as described in the definition of Procurement Value. Departments may not divide a single project, purchase, or transaction with one or more Contractors into more than one project, purchase, or transaction for the purpose of reducing the Procurement Value, meeting a lower Procurement Threshold, or circumventing a Procurement Method.
- (f) **Documentation.** Each Procurement Method requires varying degrees of documentation, including, when applicable, documentation of a Competitive Process. This documentation must be maintained by the Department in accordance with this Policy and Applicable Laws, including Oregon public records laws.
- (g) **Miscellaneous Considerations for Procurement Processes.** Although the Procurement Value and Procurement Threshold may initially indicate that a specific Procurement Method should be used, Departments should review Miscellaneous Considerations for Procurement Processes in Section 3 to determine whether a different Procurement Method can or must be used and whether other steps must be taken for a particular purchase or transaction.

4 PROCUREMENT METHODS – NON-FEDERALLY FUNDED PURCHASES

- (a) **Direct Procurement (Procurement Value up to \$25,000).** Purchasing or obtaining goods and/or services with a Procurement Value that does not exceed \$25,000 does not require the use of a Competitive Process. Departments may negotiate and purchase or obtain goods and/or services directly with a single Contractor so long as the price is fair and reasonable.
- (b) **Informal Procurement (Procurement Value greater than \$25,000 up to \$250,000).** Purchasing or obtaining goods and/or services with a total Procurement Value over \$25,000 up to \$250,000 must be completed using an Informal Procurement. Informal Procurement requires a Competitive Process involving the solicitation of quotes from at least three Contractors, including at least one MWESB (defined below) Contractor. This requirement may be met by obtaining a quote directly from a Contractor, finding an advertisement from a Contractor, soliciting quotes via the WOU procurement website, or using existing Price Agreements. If the Department cannot obtain at least three quotes and/or one quote from a MWESB Contractor, the Department must prepare written documentation detailing the efforts made to obtain the required quotes.
 - i. **Required Documentation.** The Department must prepare and maintain a record for each Informal Procurement that includes, but is not limited to:

- (A) Rationale for the Procurement Method
- (B) Rationale for the type of Contract
- (C) Specifications for the goods and/or service
- (D) All award criteria, including contract price and any other factors used
- (E) Request for quotes or other Solicitation Documents
- (F) Documentation of solicitation communications, quote revisions, and supplier communications
- (G) All supplier quotes or responses to the Informal Procurement
- (H) Rationale for selecting and rejecting Contractors and bids
- (I) Notifications to Contractors of the Award, Disqualifications, or rejected bids
- (J) Copy of purchase document (for example, services Contract or purchase order)
- (K) Documentation of purchase completion and payment

(c) Formal Procurement (Procurement Value greater than \$250,000). Purchasing or obtaining goods and/or services with a total Procurement Value greater than \$250,000 requires a Competitive Process using either an Invitation to Bid or a Request for Proposal. An ITB is the method of Formal Procurement used for soliciting competitive bids when Specifications, price, and date of delivery or completion are the predominant criteria for the Award. An RFP is the method of Formal Procurement used for soliciting competitive bids when Specifications, price, and date of delivery or completion will not necessarily be the predominant criteria for Award.

iii.Required Documentation. The Department must prepare and maintain a record for each Formal Procurement that includes, but is not limited to:

- (L) Rationale for the Procurement Method
- (M) Rationale for the type of Contract
- (N) Specifications for the goods and/or services
- (O) All award criteria, including contract price and any other factors used
- (P) ITB or RFP Solicitation Document
- (Q) Documentation of advertisement and Contractor bids or proposals
- (R) All Contractor correspondence connected to the formal procurement
- (S) Documentation of how the successful Contractor was selected including all scoring sheets and any other notes or forms used by anyone involved in scoring or ranking the responses or in determining the successful supplier
- (T) Notifications to Contractors of the Award, Disqualifications, or rejected bids
- (U) Copy of resulting Contract
- (V) Documentation of all required approvals, including OGC approval, if required
- (W) Documentation of purchase completion and payment

ii.Invitation to Bid Requirements. The following additional requirements apply to ITBs:

- (A) Preparing a Solicitation Document that, at a minimum, describes the Procurement Process applicable to the purchase or transaction, Specifications, and the date and time the ITB will close;
- (B) If necessary, establishing a Selection Committee of WOU employees to evaluate Contractor bids after closing of the ITB – Selection Committee members must review and sign the WOU Conflict of Interest Statement policy;
- (C) Publishing the ITB Solicitation Document on the WOU procurement website and, if helpful, other public procurement websites;
- (D) Publishing the ITB Solicitation Document in trade or MWESB-targeted periodicals or websites;
- (E) Closing the ITB at the appointed date and time and, thereafter, determining the lowest bidder; and
- (F) Awarding the Contract to the lowest bidder.

iii. Request for Proposal Requirements. The RFP requirements are the same as ITB requirements. The RFP bid selection criteria will be detailed in the RFP. RFPs typically include the use of a Selection Committee to score proposals and select the winning proposal.

- (d) **Disqualification Determination and Notice.** The President, VPFA, or a designee may, at any time, review a Contractor's eligibility for Awards of WOU Contracts in accordance with this Policy. If a Contractor or bid is Disqualified or rejected for Awards in accordance with this Policy, WOU will provide written notice of such to the Contractor. The notice will include the grounds for Disqualification or rejection and a description of the Contractor's protest rights and applicable deadlines. See Section 6 below for additional details regarding protests.
- (e) **Brands With Qualified Goods and/or Services.** When specific design or performance Specifications must be met for goods and/or services to be purchased, WOU may use a "brand name or equivalent" description of qualifying goods and/or services accompanied by a clear description of the qualifying Specifications of the named brand that Contractors are required to meet. Sole Source procurement based on brand must be avoided unless no reasonably available alternative source exists.
- (f) **Competitive Process Not Required.** For non-Federally Funded Purchases, the following categories of purchases or transactions are exempt from Competitive Process requirements. Federally Funded Purchases are subject to different rules related to exemptions from Competitive Processes. Consult with PCM to review circumstances in which no Competitive Process is required for a Federally Funded Purchase. When a Competitive Process is not required, the Department making the purchase or transaction must still comply with all other requirements of this Policy, including the Contract requirements described in Section 9.
 - i. Emergency Purchases or Transactions.** WOU's President, VPFA, or a designee may declare an Emergency and authorize purchases or transactions without a Competitive Process when such a declaration is deemed appropriate. The reasons for the declaration of Emergency will be documented. After an Emergency has been declared, WOU may purchase through Direct Procurement with any Contractor for goods and/or services reasonably included within the scope, purpose, or necessity of the Emergency, and each purchase or transaction will include documentation with justification for the procedure used to select the Contractor in accordance with the Emergency declaration. WOU will maintain appropriate records of negotiations carried out as part of the purchase or transaction.

iii.Special Entities. No Competitive Process is required for purchases or transactions with any of the following entities:

- (A) a federal, state, or local governmental entity; or
- (B) a Contractor certified by the Oregon Forward program (see <https://www.oregon.gov/das/procurement/pages/oregonforward.aspx>)

iii.Miscellaneous Exemptions. No Competitive Process is required for the following purchases or transactions, regardless of the Procurement Value.

- (A) Artists, performers, photographers, graphic designers, and website designers.
- (B) Speakers.
- (C) Athletic contest agreements.
- (D) Goods and/or services related to athletic intercollegiate programs.
- (E) Cadavers or cadaveric organs.
- (F) Contracts for educational services provided directly to WOU students.
- (G) Third-party student recruitment service providers.
- (H) Protected intellectual property. Protected intellectual property covered by this exemption may include, but are not limited to, copyrighted materials, licenses of patents, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.
- (I) Dues, registrations, and membership fees.
- (J) Food and food related products, but not including catering services.
- (K) Booth space for exhibits at conventions, recruitment events, trade shows, and similar events.
- (L) Hotel reservations at a hotel that is the site for conferences or workshops organized by outside agencies.
- (M) Goods and/or services purchased and provided in foreign countries.
- (N) Group travel in foreign countries.
- (O) Goods and/or services purchased for resale to outside entities.
- (P) Grant and government contract applications, proposals, and agreements; including services related to the development of such applications and proposals.
- (Q) Repair and overhaul of goods or equipment.
- (R) Maintenance or repair services provided by or on behalf of the Contractor that provided the goods and/or services or the original equipment manufacturer or creator of the goods and/or services.
- (S) Price-regulated goods and services, including utilities, where the rate or price for the goods and/or services purchased is established by a federal, state, or local regulatory authority.
- (T) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, and similar commodities and products and the transportation of them.
- (U) Sponsorship agreements for WOU events or facilities.
- (V) Used books.

(W) Used personal property, if the valuation of the property is substantiated and the purchase or transaction is approved by WOU's Controller or a designee.

(X) Grant-funded and Federally Funded Purchases or transactions when (i) the providers of goods and/or services are named in the grant or identified in the Grant budget and the grantor (including, if applicable, the granting agency) has expressly waived a Competitive Process requirement, or (ii) the transaction qualifies as a grant subaward, unless WOU determines it is in its best interest to require a Competitive Process.

(Y) Purchases or transactions pursuant to federal contracts or grants which establish the price of goods and/or services. WOU may purchase the goods and/or services in accordance with the federal contract or grant without a Competitive Process.

(Z) Insurance and insurance related contracts, excluding consulting or brokerage contracts.

(AA) Contracts related to:

I. The incurring of debt by WOU, including but not limited to the issuance of bonds, and other debt repayment obligations, and any associated Contracts, regardless of whether the obligations that the Contracts establish are general, special, or limited.

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

III. The investment of funds by WOU as authorized by law and other financial transactions of WOU that by their character cannot practically be established under the Competitive Process.

(BB) Purchases or transactions to establish employee benefit plans.

(CC) Investment contracts and retirement plan services, excluding consulting services.

(DD) Services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, and veterinarians.

(EE) Contracts for legal services, including, but not limited to, professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters or legal matters in which WOU is or may become interested.

iv. Amendments. Amendments are allowed without performing a new Competitive Process if (i) any goods and/or services added to the Contract are reasonably within the scope of the original Contract and (ii) any increase in the Contract Value (including, but not limited to, an increase in Contract Value by extended the time period of the Contract) does not result in the Contract Value exceeding the Procurement Threshold of the original Procurement Method for the Contract. If the Amendment is beyond the scope of the original Contract or increases the Contract Value beyond the Procurement Threshold of the original Procurement Method, the Contract may not be amended and a new Competitive Process must be performed to achieve the purposes of the proposed Amendment. WOU's exercise of a unilateral right to extend the term of a Contract does not constitute an Amendment for purposes of this Subsection.

v. Expired Contracts. If the term of a Contract has expired, but the expired Contract (i) allows an extension of the term or can otherwise be reinstated and extended by agreement of the parties and (ii) any changes resulting from reinstating the Contract meet the requirements for an Amendment without a Competitive Process, the Contract may be reinstated without a new Competitive Process upon approval by the President, VPFA, or a designee.

vi. Sole Source. Departments purchasing or obtaining goods and/or services only available from a single Contractor must complete a Sole Source Justification Form from the PCM Department and obtain approval from the President, VPFA, or a designee prior to purchasing. The Sole Source Justification Form must include a description of the proposed procurement and the basis for determining that the goods and/or services are only available from a single Contractor. A compelling Sole Source request demonstrates the link between the Department and its program requirements and why the proposed Contractor's goods and/or services are the only source reasonably capable of meeting those requirements.

(A) **Brand Name Specification.** For non-Federally Funded Purchases, WOU may specify brand names in the procurement of goods and/or services if a particular product or service has attributes not found in other products and services of like kind. Sole Source procurement based on brand must be avoided unless no reasonably available alternative source exists.

(B) **Sole Source Procurement Process.** If the Sole Source purchase or transaction is approved, the Department must complete the following steps:

- I. The Department must post a notice of the anticipated Sole Source procurement on the WOU procurement website and/or the OregonBuys website for at least seven Days to allow for protest. The notice must include a description of the goods and/or services, the name of the Sole Source Contractor, and the date, time, and place that protests are due.
- II. After the Sole Source procurement has been authorized and the notice requirements have been met, the purchase or transaction may be made through Direct Procurement with the Contractor.

vii. Special Procurement. A purchase or transaction is exempt from Competitive Process when the President, VPFA, or a designee determines an exemption is appropriate because exemption (i) is reasonably expected to result in substantial cost savings to WOU or the public, or (ii) otherwise substantially promotes the public interest in a manner that could not practically be realized by complying with the Competitive Processes described by these Procurement Policies and Procedures.

Contact the PCM Department for additional information on exemptions from the Competitive Process.

(g) Price Agreement Programs. Price Agreements are agreements in which a Contractor provides specific goods and/or services to WOU at a pre-established price, during a specified period, and subject to pre-established terms and conditions. Purchases from a previously established Price Agreement might provide discounts not otherwise available and, in some circumstances, might be exempt from Competitive Processes and OGC review requirements. Additionally, Price Agreements may save time, money, and result in the best value. Price Agreements may be particularly helpful in meeting the requirements for Informal Procurement.

There are two categories of Price Agreements that WOU may use:

- I. Price Agreements established by either WOU or the State of Oregon. These include:
 - (A) **OregonBuys.** The Oregon Department of Administrative Services (“**DAS**”) Purchasing Division negotiates Price Agreements for various goods and/or services, and the cost savings and Contract language of these agreements can be beneficial to WOU. These Price Agreements can be accessed through DAS's OregonBuys website (<https://oregonbuys.gov/bsol/>). Departments are encouraged to use these agreements for their purchases whenever possible.
 - (B) **Merchant Purchasing Program.** WOU has established corporate accounts with several retail merchants. These programs typically offer low prices, easy ordering, and free or low-cost delivery direct to Departments. To purchase goods and/or services from these merchants, contact the PCM Department to set up an account that will allow direct orders. These programs

should not be used for purchases or transactions that are subject to Competitive Process requirements unless authorized by OGC or the PCM Department.

(C) **Retainer Contracts.** WOU may conduct a Formal Procurement to pre-qualify multiple Contractors to enter into Retainer Contracts to provide goods and/or services on an as-needed basis at pre-established rates.

II. Cooperative Agreements, including Group Purchasing Organization (“**GPO**”), Price Agreements or other public entity Price Agreements (“**Cooperative Agreements**”). Departments may access and buy from these agreements after OGC or the PCM Department has reviewed and approved their use.

5. PROCUREMENT METHODS – FEDERALLY FUNDED PURCHASES

i. Federally Funded Purchases Generally. Federally Funded Purchases require compliance with the Uniform Guidance and FAR. These regulations’ Procurement Thresholds, Competitive Processes, exemptions, and other rules are frequently amended and are subject to variation depending on the federal agency issuing the grant or contract. Departments making Federally Funded Purchases must work closely with the PCM Department, Sponsored Projects Office, and other WOU stakeholders to ensure that these regulations are carefully reviewed and followed.

ii. Required Documentation. In order to comply with federal requirements, WOU will adopt the procurement processes established under the Uniform Guidance for Federally Funded Purchases. As part of this process, Departments will document the: (1) rationale for the Procurement Method used; (2) rationale for the type of Contract used; (3) basis for Contractor selection or rejection; and (4) basis for the Contract price for each Federally Funded Purchase. Additionally, Departments must also obtain from the Contractor any additional documentation necessary to comply with Applicable Laws, including federal regulations.

iii. Procurement Value Under \$10,000. For Procurement Values subject to the Micro-Purchase Procurement method up to \$10,000, the documentation requirements for Federally Funded Purchases may be met by documenting a reasonable business purpose and the purchase price.

iv. Procurement Value Between \$10,000 and \$250,000. For Procurement Values subject to the Small Purchase Procurement method over \$10,000 up to \$25,000, WOU will maintain documentation of a minimum of three quotes for each purchase or transaction or its attempts to obtain such quotes.

v. Procurement Value Over \$250,000. For purchases with Procurement Value over \$250,000, WOU will use an Informal Procurement unless the purchase would otherwise be exempt from Competitive Process under Uniform Guidance.

vi. Cost and Price Analysis for Grant Funded Purchases From a Sole Source. WOU will conduct a cost and price analysis as described in the Uniform Guidance for all Federally Funded Purchases with (i) a Procurement Value over \$150,000 or (ii) purchased from a Sole Source with a Procurement Value over \$10,000.

vii. Noncompetitive Procurement. Federally Funded Purchases are not subject to the Competitive Process exemptions described above for Non-Federally Funded Purchases.

Noncompetitive procurement for Federally Funded Purchases is only permitted if one or more of the following circumstances applies:

- (A) the Procurement Value of the purchase or transaction does not exceed the Micro-Purchase Procurement Threshold;
- (B) the goods and/or services are available only from a single source;
- (C) public exigency or emergency circumstances do not allow adequate time to conduct a Competitive Process;
- (D) the federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from WOU; or
- (E) after seeking quotes from a number of sources, competition is determined inadequate.

viii. Additional Federally Funded Purchase Rules. Departments must work with the PCM Department, Sponsored Projects Office, and other stakeholders to ensure compliance with the details of federal regulations, including those rules described above. For example, federal regulations may require certain specific terms and conditions be included in the Contract.

6. PROTESTS

- (a) **Permissible Protests.** Contractors who are aggrieved by WOU's Competitive Process for a purchase or transaction and allege and demonstrate that WOU's conduct of the Competitive Process has adversely affected or is adversely affecting the Contractor may submit a protest to WOU. The Contractor must exhaust all available administrative remedies before seeking judicial review of WOU's Competitive Process. Contractors may protest any of the following matters:
 - i. Any determination that a Contractor is Disqualified, eligible, or ineligible;
 - ii. Any determination that a Contractor's bid is eligible or ineligible (including a denial, rejection, or disqualification) for an Award;
 - iii. The determination to use a Sole Source procurement for a purchase or transaction;
 - iv. The proper performance of each administrative step of the Competitive Process;
 - v. The content of a Solicitation Document; or
 - vi. The selection of one or more Contractors.
- (b) **Deadline for Submission of Protest.** Unless otherwise specified in the Solicitation Document or this Subsection, a Contractor must deliver a written protest to WOU within three business days after the Award of a Contract or issuance of the notice of intent to Award the Contract, whichever occurs first. Protests must be clearly marked on the outside of the envelope with the title or the number of the Solicitation Document and bid. A Contractor who wishes to protest Disqualification must submit a written protest to WOU within three business days after receipt of notice of Disqualification. A Contractor who wishes to protest a Sole Source procurement must submit a written protest to WOU within seven Days of the earlier of the date the procurement is posted on (i) WOU's procurement website or (ii) the OregonBuys website.
- (c) **Content of Protest.** A protest must fully specify the grounds for the protest and include all evidence that the protestor wishes the VPFA or designee to consider. Failure to include any ground for the protest or any evidence in support of it will constitute a final, knowing, and voluntary waiver of the right

to assert such ground or evidence. A protest must include a conspicuous marking identifying the type and nature of the protest.

- (d) **Protest of Bid.** A protest of a determination regarding a Contractor's bid must demonstrate that WOU's determination is materially in error or that WOU committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of WOU's determination.
- (e) **Protest of Solicitation Document.** A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including, but not limited to, Specifications or Contract terms, violates Applicable Laws. If WOU determines that the Solicitation Document violates Applicable Laws, it will, after correcting the Solicitation Document, (i) promptly publish or transmit to Contractors the revised Solicitation Document and reinitiate or extend the relevant step in the Competitive Process if appropriate or (ii) in its sole discretion, determine to terminate the Procurement Process without making an Award and begin a new Procurement Process.
- (f) **Protest of Selected Contractor(s).** A protest of WOU's selected Contractor due to Disqualification requires the protestor to demonstrate, as applicable:
 - i. all Contractors ranked higher than the protestor were or should have been Disqualified and the protestor would have been the highest ranked eligible Contractor; and
 - ii. the Contractor selected for Award was or should have been Disqualified.
- (g) **Protest of Sole Source Procurement.** A protest of a Sole Source procurement requires the protestor to demonstrate that the selected Contractor is not the only Contractor reasonably available to provide goods and/or services meeting WOU's requirements.
- (h) **Response.** The President, VPFA, or a designee will respond to all valid protests. A protest received after the time set out in the Solicitation Document will not be considered. The President, VPFA, or designee will issue a written decision on the protest within a reasonable period of time. If the protest is sustained, in whole or in part, WOU may, in its sole discretion, either Award the Contract to the successful protestor or cancel the Competitive Process. The Contract Award may be issued prior to issuance of a written decision if authorized by the President, VPFA, or a designee.
- (i) **Judicial Review.** Judicial review of WOU's decision in response to a protest will be available as provided under applicable Oregon law.

7. MISCELLANEOUS CONSIDERATIONS FOR PROCUREMENT PROCESSES

- (a) **Minority-Owned, Women-Owned, Service-Disabled Veteran, and Emerging Small Businesses.** WOU requires procurement that promotes open and fair competition. Competitive Processes require effort to solicit a bid from at least one minority-owned, women-owned, or emerging small business Contractor certified by either WOU or Oregon's Certification Office for Business Inclusion and Diversity ("**COBID**") (<https://www.oregon.gov/biz/programs/cobid/>). If certified MWESBs are not available, self-identified MWESBs or firms certified by any other state, federal, or local government entity will satisfy this requirement. WOU also encourages Departments to proactively solicit bids from service-disabled veteran business enterprises.
- (b) **Disqualification.** WOU may not purchase or obtain goods and/or services from a Contractor that has been disqualified for any of the following reasons ("**Disqualified**" or "**Disqualification**"):
 - i. A Primary Employee of the Contractor has been convicted of a criminal offense as an incident of obtaining or attempting to obtain a public or private Contract or subcontract or in the performance of such Contract or subcontract;

- ii. A Primary Employee of the Contractor has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, misrepresentation, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the Primary Employee's responsibility for the Contractor;
- iii. A Primary Employee of the Contractor has been convicted under state or federal antitrust statutes;
- iv. A Primary Employee of the Contractor has committed a violation of a Contract provision or engaged in other conduct that is regarded by WOU or any state or federal agency or entity to be so serious as to justify or legally require debarment or other form of disqualification (pursuant to ORS 279B.130, 279C.440 or 279C.860 or any other Applicable Laws). A violation may include, but is not limited to, a failure to perform the terms of a contract or unsatisfactory performance of a contract. However, a failure to perform or unsatisfactory performance caused by circumstances beyond the control of the Contractor may not be considered to be a basis for Disqualification;
- v. The Contractor has not met any mandatory prequalification standards, when applicable;
- vi. The Contractor has violated ORS 200.065 or 200.075 related to MWESB Contractors;
- vii. The Contractor is not a responsible Contractor as defined in PCM Department procedures;
- viii. The Contractor does not carry workers' compensation or unemployment insurance as required by statute; or
- ix. Any other reasonable basis for disqualification described in PCM Department procedures.

WOU will maintain a current list of Contractors that have been Disqualified and Departments can contact the PCM Department to confirm whether a potential Contractor is Disqualified.

- (c) **Contracting with Current and Former Employees.** Pursuant to US Department of Labor and Oregon BOLI regulations and guidance, WOU may not Contract with current WOU employees to perform services in addition to their current employment. Current employees cannot be considered independent contractors in addition to their current status as an employee, even if the separately contracted work is outside the scope of the employee's usual duties. Departments should also, if possible, avoid contracting with former employees. Former employees might also not be considered bona fide independent contractors, especially when the services contracted are within the scope of their previous employment and the former employee has no other clients.
- (d) **Computer Hardware and Software.** Computer hardware and software purchases are subject to approval from University Computing Solutions ("**UCS**") and any software-related WOU policies. Requests to purchase hardware or software can be submitted through UCS's Purchase Request (Computing Hardware/Software) Form.
 - i. **Software.** All software purchases must be reviewed by UCS to ensure the software is compatible with WOU systems, does not pose a cybersecurity risk, and is not already purchased or the purpose is not already fulfilled by another software purchase. Additionally, purchases of any Software as a Service ("**SaaS**") or software that requires a maintenance agreement, service agreement, or cloud servicing agreement must be reviewed by OGC, unless exempt under other WOU policies and procedures. Please contact PCM for additional details regarding click-through agreements.
- (e) **Fixed Assets.** Departments must report all purchases of Fixed Assets to ABS so they can be added to WOU's inventory of Fixed Assets.

- (f) **Capital Construction Procurement.** WOU has established additional policies and/or procedures governing purchases and transactions for services related to capital construction projects. Those policies and/or procedures governing capital construction projects supersede this Policy in the event of any conflict. Capital construction projects include any project in which WOU seeks to erect, improve, repair, maintain, equip, and furnish real property, buildings, and structures that it owns or occupies.
- i. Capital construction-related services include, but are not limited to, finance, design, preconstruction, design-build, construction services and any other services rendered by architects, planners, appraisers, engineers, construction managers, and similar professions.
- Capital construction is any construction, renovation, or improvement of a facility or improvement which exceeds Procurement Value of \$500,000 and is not considered repair or maintenance.
- (g) **Real Property Transactions.** Purchases, sales, and other forms of conveyance of WOU real property, including the acquisition or conveyance of easements, are not subject to the Competitive Process requirements of this Policy. OGC must review all Contracts related to (i) the purchase or sale of real property or improvements to real property, and (ii) the conveyance or receipt of easements.
- (h) **Transactions Using Tax-Exempt Bond Funds.** All purchases or transactions funded by tax-exempt bonds must be coordinated with OGC and the PCM Department to ensure compliance with legal obligations for tax-exempt bonds.

8. BUDGET AUTHORITY AND CONTRACT AUTHORITY

- (a) **Required Approvals.** Every WOU purchase or transaction must be approved by both a Budget Authority and a Contract Authority as follows.
- i. **Budget Authority.**
- (A) **Definition of Budget Authority.** “**Budget Authority**” means a WOU employee authorized to approve expenditures for, from, and within their Department’s budget and operations. WOU’s methods of appointing a Budget Authority are established and described under separate policies, delegations, or other processes.
- (B) **Responsibilities and Delegation.** Budget Authorities have the responsibility and authority to approve the expenditure of their Department’s funds. Budget Authorities may delegate their authority to approve expenses to other employees within the same Department.
- (C) **Approvals.** Budget Authority approval involves the Budget Authority (or Buyer, if applicable and permitted) approving the use of a specified amount of Department budget funds to purchase or obtain certain good and/or services and verification that there are sufficient funds available in the Department’s budget.
- (D) **Documentation.** Departments must retain a record of (i) Budget Authority approvals; (ii) Budget Authority delegations to other employees to authorize expenses; and (iii) the Budget Authority’s signed Code of Ethics.
- ii. **Contract Authority.**
- (A) **Definition of Contract Authority.** “**Contract Authority**” means a WOU employee authorized to enter into agreements that legally bind WOU. The PCM Department will maintain a list of WOU employees designated as Contract Authorities. Contract Authorities may not sign any Contract for which they have not been delegated authority, including Contracts that require the WOU Board of Trustees’ approval pursuant to the Board Statement on Delegation of Authority.

- (B) **Responsibilities and Delegation.** Contract Authorities have the responsibility and authority to approve the Contract used for purchases and transactions. WOU's President, Provost, VPFA, and General Counsel are Contract Authorities, and they may designate other WOU employees as Contract Authorities.
- (C) **Approvals.** Contract Authority approval involves the Contract Authority (1) verifying that the required or a permissible form of Contract is used for the specified purchase or transaction; (2) verifying that the terms and conditions of the Contract are aligned with Applicable Laws, Procurement Policies and Procedures, and good business practices; (3) ensuring Budget Authority approval has been obtained; (4) signifying WOU's agreement by signing a Contract or other permissible means; and (5) ensuring that they or another WOU employee will obtain, retain, maintain, and retrieve the Contract and other documents and records related to the purchase or transaction before, during, and after the transaction.
- (D) **Unauthorized Contracts.** Contracts that have been entered into, agreed to, or signed by employees who are not designated as Contract Authorities are voidable at WOU's sole discretion. WOU may take appropriate action in response to unauthorized Contracts, including, but not limited to, providing educational guidance, imposing disciplinary measures, and requiring the employee to be personally liable for the unauthorized Contract.
- (E) **Certifications and Factual Statements.** Documents summarizing facts or certifying the truth of factual statements and do not make any other binding commitments are not Contracts and do not require Contract Authority approval.
- (b) **Segregation of Duties.** Budget Authority and Contract Authority are separate authorities. An employee's appointment as a Budget Authority does not also appoint them as a Contract Authority, and vice versa. When appointing Budget Authorities and Contract Authorities, the segregation of duties must be considered and applied to the extent possible. Segregation of duties means avoiding authorizing a single employee to approve budget expenditures, make the subsequent purchases, and then receive the goods and/or services. To the extent possible, these functions (including Budget Authority and Contract Authority) should be divided in a manner that requires the involvement of at least two employees in each purchase or transaction. Segregation of duties reduces the risk of fraud and misuse of WOU funds.

9. CONTRACTS

- (a) **Written Contracts.** Every WOU purchase or transaction must be made and documented using the proper form of Contract. Contract Authorities, including the President, Provost, VPFA, OGC, and their designees, are the only employees authorized to legally bind WOU by Contract. A Contract made or signed by a WOU employee who is not Contract Authority is an unauthorized Contract as described in Subsection 8. Although this Policy authorizes the use of less formal forms of Contract in limited circumstances described below, purchases and transactions must still be approved by Contract Authorities even when the Contracts are very informal (for example, agreements to purchase that are documented by invoices, purchase orders, receipts, or other informal written documents).
- (b) **Permissible Forms of Written Contract.** A written Contract includes any document that meets the standards of or memorializes certain terms of a legally binding agreement. A Contract made in electronic form is a valid, binding Contract if it would be a valid, binding Contract in printed form. Unless otherwise permitted by WOU Policies and Procedures, all WOU purchases and transactions must be made using formal Contracts with WOU's approved standard terms and conditions, modified terms and conditions as negotiated with a Contractor, or similar negotiated formal Contract instrument containing detailed terms and conditions governing the purchase or transaction. Contract

Authorities may approve purchases or transactions using alternative forms of Contract for specific categories of purchases in limited circumstances described in WOU Policies and Procedures. Alternative forms of Contract that may be authorized include, but are not limited to, purchase orders, Contractor order forms, invoices, "click-through" agreements, and Contracts memorialized by a receipt. In determining the circumstances in which an alternative form of Contract may be used and the type of permissible Contract for such circumstances, WOU must balance its interests in business efficiency and avoiding inappropriate levels of legal and business risks.

- (c) **Contract Payments Made with Cash or P-Card.** Purchases or transactions paid for by cash or P-Card, like any purchase or transaction, must be documented by the appropriate form of written Contract in accordance with WOU's Procurement Policies and Procedures. A cash or P-Card payment (such as the use of cash at a retail store or a P-Card payment for an online purchase) is merely a form of payment and does not, on its own, meet the requirement for a written Contract. Bank statements or P-Card account statements also do not satisfy the requirement for a written Contract. Except when expressly prohibited by Applicable laws or other WOU policies or procedures, every purchase or transaction, if made and documented with the appropriate form of written Contract, may be paid using cash or a P-Card if the Contractor accepts it. See Section 10 for additional details.
- (d) **Contracts Subject to Applicable Laws; Grant-Funded and Federally Funded Purchases.** The form of Contract for each purchase or transaction must comply with all Applicable Laws. If Applicable Laws, Grant-funded purchases, or Federally Funded Purchases require a different form of Contract, the Contract must be prepared to conform to such requirements.

10. PAYMENT

- (a) **Payment Generally.** Departments must make contractually required payments for all purchases and transactions in accordance with the Contract and WOU policies and procedures. Payment may be made in any reasonable form to the extent permitted by Applicable Laws, WOU policies and procedures, and the Contract.
- (b) **Interest or Fees on Overdue Payments.** WOU is permitted to agree to Contracts requiring interest or reasonable fees be paid to Contractors when payment has not been made within a reasonable time of when due.
 - i. **Limit on Interest.** Overdue interest or fees cannot exceed an amount equal to two-thirds of one percent of the overdue amount per month, but not more than eight percent per annum.
 - ii. **Date Payment is Overdue.** Overdue payments are those amounts that have not been paid within 45 days from the latest of the following dates: (i) the date of receipt of an accurate invoice, (ii) the date of the initial billing statement, if no invoice is received, (iii) the date all goods and/or services have been received or rendered, or (iv) the date the right to interest or fees is made certain by the Contract between the parties or by Applicable Laws. However, overdue interest and fees will not accrue on any purchases or transactions made by WOU during time of civil emergency or natural disaster that prevents the timely payment. In such circumstances, payment will be made in as timely a manner as possible.
- (c) **Payment by Cash or P-Card.** WOU has established policies and procedures with respect to the use of cash and P-Cards to make payments. Except when expressly prohibited by Applicable laws or other WOU policies or procedures, every purchase or transaction, if made and documented with the appropriate form of written Contract, may be paid using cash or a P-Card if the Contractor accepts it.

11. CONTRACT ADMINISTRATION

- (a) **Ensuring Quality and Performance.** The Department making the purchase or transaction is responsible for ensuring that all goods and/or services provided pursuant to the Contract conform to the Contract's requirements. If goods are damaged, defective or otherwise unsatisfactory or if services are not adequate, improperly performed, or not completed, the Department must seek enforcement of the Contract. Departments should contact the PCM Department or OGC if the Contractor refuses to abide by the Contract.
- (b) **Ensuring WOU Contract Compliance.** The Department making the purchase or transaction must adopt procedures to ensure continued compliance with Contract obligations over time. The Department's procedures must establish a reliable method for tracking and monitoring deadlines, reporting requirements, and other continuing compliance obligations.
- (c) **Payment on Fixed Fee Contracts.** The Department is responsible for ensuring that payments to a Contractor do not exceed the maximum fee authorized in a Contract.
- (d) **Records Retention.** Each Department must maintain all purchase or transaction documentation consistent with WOU records retention policy, procedures, and schedules. If WOU has not adopted separate records retention policies, procedures, or schedules, such documentation will be maintained consistent with the Oregon Secretary of State.

12. ETHICS COMPLIANCE

- (a) **WOU Procurement Code of Ethics.** WOU employees must review and sign WOU's Procurement Code of Ethics prior to participating in any part of Procurement Processes.
- (b) **Declaration of No Conflict.** In addition to the Procurement Code of Ethics, all WOU employees who participate in a Formal Procurement must review and sign a Declaration of No Conflict.
- (c) **Reporting Policy Violations.**
 - i. WOU is committed to an environment where open, honest communication is the expectation, not the exception. All employees should feel comfortable approaching a supervisor or management in instances where they believe violations of policies or standards have occurred. Anyone that is aware of fraud, waste, or abuse occurring within WOU may report concerns to PCM, the Office of General Counsel campus or through WOU's hotline. The hotline is a confidential and anonymous reporting system operated by an independent, third-party vendor. FRAUD, WASTE & ABUSE HOTLINE 1-855-375-6726. Concerns may also be reported to the Oregon Secretary of State Audits Division at 1-800-336-8218.
 - ii. Employees who identify themselves and make a good faith report of suspected fraud, waste, or abuse are protected from retaliation in accordance with ORS 659A.199 *et seq.* To the greatest extent reasonable and permissible under Applicable Laws, WOU will take steps to maintain the confidentiality of employees who submit a report.

PCM DEPARTMENT PROCEDURES

The following procedures supplement WOU's Procurement and Contracting Policy ("**Policy**"). Each procedure below corresponds to the portion of the Policy of the same title and/or subtitle.

PROCUREMENT METHODS – NON-FEDERALLY FUNDED PURCHASES

Price Agreement Programs.

OGC or the PCM Department may approve a Cooperative Agreement as satisfying Competitive Process requirements for non-Federally Funded Purchases so long as the Cooperative Agreement was procured in a manner that meets all of the following criteria:

- iii. The opportunity was advertised in the State of Oregon for the appropriate amount of time, either in print or online;
- iv. The procurement process was conducted in a fair and competitive matter;
- v. The decision to award is based on reasonably objective qualitative and quantitative criteria; and
- vi. The agreement contains the appropriate “jump on” language allowing WOU to utilize the agreement.

BUDGET AUTHORITY AND CONTRACT AUTHORITY

Permissible Forms of Written Contract.

General Rule: Unless otherwise permitted by WOU Policies and Procedures, all WOU purchases and transactions must be made using formal Contracts with WOU’s approved standard Contract terms and conditions, modified terms and conditions as negotiated with a Contractor, or a similar form of negotiated Contract instrument containing detailed terms and conditions governing the purchase or transaction.

WOU-Approved Purchase Orders: Purchases or transactions may be made with a written purchase order if the purchase order is made pursuant to the terms and conditions of (a) an OregonBuys, Oregon Forward, or another State of Oregon Price Agreement, (b) a WOU-approved GPO or Cooperative Agreement, (c) another WOU-approved Price Agreement or Contract, (d) a WOU Retainer Agreement; or (e) a WOU Contract. The Department’s submission of the purchase order to the Contractor must be accompanied by a copy of the terms and conditions of the Contract governing the purchase order. If the Contractor requests changes to the Contract or requires WOU to agree to separate terms and conditions not found in the Contract, the Department must treat this as a request for a new Contract and follow the appropriate WOU Policies and Procedures for new Contracts.

Contractor Invoices, Order Forms, or Similar Documents Incorporating WOU Standard Terms and Conditions: Purchases and transactions may be made using a Contractor-issued written invoice, order form, or similar document if the invoice, order form, or similar document includes, or is accompanied by, a signed written acknowledgment that the invoice, order form, or similar document is subject and subordinate to WOU’s standard Contract terms and conditions.

Contractor Invoices, Order Forms, Receipts, or Similar Documents Without WOU Standard Terms and Conditions: Purchases and transactions may be made with any record that qualifies as (or memorializes certain terms of) a legally binding agreement (including, but not limited to, receipts) in the following circumstances:

- Purchases or transactions with Procurement Value up to \$50,000
 - Stock, off-the-shelf goods, if approved by the CPCM Department or OGC in writing by continuing delegation of authority or other form of approval;
 - Goods and/or services from federal, state, local, or other government entities, if approved by the General Counsel in writing by continuing delegation of authority or other form of approval;
- Purchases or transactions with Procurement Value up to \$10,000

- Goods;
- Trade Services;
- Classified or similar forms of ad and public notice placements;
- Speakers or performers with engagements of less than one week (so long as the performances do not involve obvious high-risk activities (e.g., fire dancers, showing wild animals, etc.))

For purposes of this procedure, the following terms have the meaning indicated below:

- **“Trade Services”** means all services that are not Personal Services, including, without limitation, janitorial or electrical services.
- **“Personal Services”** means services that require specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, the services of an accountant, physician or dentist, educator, information technology professional, consultant, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor), architect, engineer, or surveyor.

Click-Through Agreements: Software is frequently sold via the internet using “click-through” or “click-to-agree” agreements (“Click-Through Agreement(s)”). Contract Authorities are permitted to purchase software via Click-Through Agreements up to \$25,000 except in any of the following circumstances:

- (A) the software purchase (i) meets Procurement Thresholds that requiring a Competitive Process or (ii) has other characteristics that require a Competitive Process;
- (B) the Click-Through Agreement requires compliance with terms that cannot be independently met by the Department without the assistance of other WOU Departments;
- (C) the software shares, transfers, or remotely hosts or stores WOU data or records, unless the software complies with (i) FERPA and other Applicable Laws and (ii) WOU’s data protection policies, procedures, and requirements;
- (D) the Click-Through Agreement requires consent to federal jurisdiction, waiver of Eleventh Amendment immunity, or waiver of sovereign immunity; or
- (E) the purchase is a Federally Funded Purchase.

REFERENCED OR RELATED POLICIES

FA-05-014 – Basis for Awarding Contracts

FA-05-015 Contract Amendments (Including Change Orders and Extra Work) and Expired Contracts

FA-05-024 Formal Procurement Receipt, Opening, and Recording of Bids and Proposals

FA-05-036 Procurement and Contracting Procedures

FA-05-037 – Procurement Card

FA-05-038 – Procurement Thresholds

FA-05-039 – Methods of Procurement

FA-09-017 – Procurement and Contracting Procedures

FA-09-018 – Methods of Procurement

RELEVANT DOCUMENTS AND LINKS

Procurement Related Documents and References Form

Delegation of Contract Authority Form

Memorandum form

HISTORY

APPROVAL DATE: 10/23/24

EFFECTIVE DATE: 10/23/24

LAST UPDATED: 05/28/2024

HISTORICAL DETAIL NOTES:

SOURCE:

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