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DIVISION 45

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REVIEW OF PUBLIC CONTRACTS

137-045-0030

Review of Public Contracts

(1) Except as described in section (2), before a Public Contract is binding on the State of Oregon, and before any service may be performed or payment may be made under the Public Contract, the Attorney General must approve for legal sufficiency in accordance with these rules:

- (a) Any Public Contract calling for or providing for payment in excess of \$150,000.
- (b) An amendment to a Public Contract described in subsection (1)(a).
- (c) An amendment that makes the amended Public Contract subject to legal sufficiency approval under subsection (1)(a).

(2) The legal sufficiency approval requirement described in section (1) does not apply to Public Contracts that are exempt from legal sufficiency approval under these division 045 rules.

(3) For purposes of determining whether a Public Contract exceeds the amounts set forth in section (1), a Public Contract calls for or provides for payments in excess of the applicable amount if one of the following applies:

(a) The Public Contract expressly provides that the Agency will make or receive payments in money, services or goods over the term of the Public Contract with a value that will, in aggregate, exceed the applicable threshold, whether or not the total amount or value of the payments is expressly stated. For purposes of this subsection, when an agency is lending money, and the only payment to the Agency is in money, "payments" receivable by the Agency mean principal, only.

(b) The Public Contract expressly provides for a guaranteed maximum price or a maximum not to exceed amount payable or receivable by the Agency with a value that exceeds the applicable threshold.

(c) Based on historical or other data available to the contracting Agency at the time of entering into the Public Contract, the contracting Agency determines that the value of the benefit, loss or detriment to the Agency that is called for by the Public Contract will likely exceed the applicable threshold.

(4) An Agency shall not fragment or segregate transactions for purposes of circumventing the legal sufficiency approval requirement.

(5) A program or activity of a recipient of a Grant that is financed by the Grant does not constitute a service performed under a Public Contract for purposes of this rule.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.047

137-045-0090

Ratification of Public Contracts

(1) Before ratifying a Public Contract under ORS 291.049, an Agency shall do all of the following:

(a) Submit to the Attorney in Charge, Business Transactions Section, a copy of the Public Contract and the proposed ratification document. The ratification document is to be executed, after approval for legal sufficiency, by an executive officer of an Agency who is responsible for oversight of the Public Contract. The ratification document must contain:

(A) An explanation of why performance began or payment was made before the Public Contract was approved by the Attorney General for legal sufficiency;

(B) A description of the steps being taken to prevent similar occurrences in the future; and

(C) A proposed ratification of the Public Contract.

(b) Obtain approval of the Public Contract for legal sufficiency from the Attorney General, through the Attorney in Charge, Business Transactions Section;

(c) Obtain all other approvals required for the Public Contract.

Stat. Auth.: ORS 291.049(3)

Stats. Implemented: ORS 291.049

REDLINED VERSION

DIVISION 45

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Stat. Auth.: ORS 291.047(3)
Stats. Implemented: ORS 291.047

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137-045-0090

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(c) Obtain all other approvals required for the Public Contract.

Stat. Auth.: ORS 291.049(3)

Stats. Implemented: ORS 291.049

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Deleted: (2) Except as provided in section (3) of this rule, the Agency shall provide a copy of the ratified Public Contract and the Agency's ratification document to the Director of the Secretary of State Audits Division within 30 days after the Public Contract is ratified or fully executed, whichever is later. ¶
(3) The requirements of section (2) of this rule do not apply to a Public Contract when the Agency concludes that it failed to obtain legal sufficiency review before performance began under the Public Contract due to excusable neglect or reasonable belief that legal sufficiency review was not required and provides reasons for its conclusion in the ratification document. For purposes of this section, "excusable neglect" means that the person responsible for obtaining legal sufficiency review of the Public Contract took reasonable action to submit the Public Contract to the Attorney General for legal sufficiency approval or reasonably relied upon a subordinate to do so. The mere fact that a person responsible for obtaining legal sufficiency review believed that someone else had done so or the fact that it was the person's usual practice to do so is not sufficient to establish excusable neglect. ¶

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