

## PUBLIC CONTRACTING REGULATIONS FOR QUALITYLIFE

### Section 1. Public Contracts – QualityLife

- A. Short Title.** This may be cited as the Public Contracting Regulations for QualityLife.
- B. Purpose of Public Contracting Regulations.** It is the policy of QualityLife (“Q-LIFE”) in adopting the Public Contracting Regulations to utilize public contracting practices and methods that maximize the efficient use of public resources and the purchasing power of public funds by:
- (1) Promoting impartial and open competition;
  - (2) Using solicitation materials that are complete and contain a clear statement of contract specifications and requirements; and
  - (3) Taking full advantage of evolving procurement methods that suit the contracting needs of Q-LIFE as they emerge within various contracting activities.
- C. Interpretation of Public Contracting Rules.** In furtherance of the purpose of the objectives set forth in subsection B, it is Q-LIFE’s intent that these Public Contracting Regulations be interpreted to authorize the full use of all contracting powers and authorities described in ORS Chapters 279A, 279B and 279C and the Model Rules of the Attorney General set forth in OAR 137-046, 047, 048, and 049.

### Section 2. Application of Public Contracting Regulations.

In accordance with ORS 279A.025, Q-LIFE’s public contracting regulations and the Oregon Public Contracting Code do NOT apply to the following classes of contracts:

- A. Between Governments.** Contracts between Q-LIFE and a public body or agency of the State of Oregon or its political subdivisions, or between Q-LIFE and an agency of the federal government.
- B. Grants.** A grant contract is an agreement under which Q-LIFE is either a grantee or a grantor of moneys, property or other assistance, including loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, for the purpose of supporting or stimulating a program or activity of the grantee and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions. The making or receiving of a grant is not a public contract subject to the Oregon Public Contracting Code; however, any grant made by Q-LIFE for the purpose of constructing a public improvement or public works project shall impose conditions on the grantee that ensure that expenditures of the grant to design or construct the public improvement or public works project are made in accordance with the Oregon Public Contracting Code and these regulations.

- C. **Attorneys, Legal Witnesses and Consultants.** Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which Q-LIFE is or may become interested or involved.
- D. **Real Property.** Acquisitions or disposals of real property or interests in real property.
- E. **Finance.** Contracts, agreements or other documents entered into, issued or established in connection with:
  - (1) The incurring of debt by Q-LIFE, including contracting with various professionals to assist Q-LIFE with the process and any contracts, agreements or other documents associated with incurring the debt, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
  - (2) The making of program loans and similar extensions or advances of funds, aid or assistance by Q-LIFE to a public or private Person for the purpose of carrying out, promoting or sustaining activities or programs authorized by law, other than for the construction of public works or public improvements;
  - (3) The investment of funds by Q-LIFE as authorized by law; or
  - (4) Banking, money management or other predominantly financial transactions of Q-LIFE that, by their character, cannot practically be established under the competitive contractor selection procedures, “based upon the findings of the Purchasing Manager.”
- F. **Employee Benefits.** Contracts for employee benefit plans or retirement plans.
- G. **Exempt Under State Laws.** Any other public contracting specifically exempted from the Oregon Public Contracting Code by another provision of law.
- H. **Federal Law.** Except as otherwise expressly provided in ORS 279C.800 to 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of the Oregon Public Contracting Code or these regulations, or require additional conditions in public contracts not authorized by the Oregon Public Contracting Code or these regulations.
- I. **Concession Agreements.** Contracts for a franchise or concession to promote or sell by a private entity or individual for its own business purposes.

### Section 3. Public Contracts – Regulation by Q-LIFE.

Except as expressly delegated under these regulations, Q-LIFE Board of Directors reserves to itself the exercise of all of the duties and authority of a contract review board and a contracting agency under state law including, but not limited to, the power and authority to:

- A. **Solicitation Methods Applicable to Contracts.** Approve the use of contracting methods and exemptions from contracting methods for a specific contract or certain classes of contracts;
- B. **Waiver of Performance and Payment Bonds.** Approve the partial or complete waiver of the requirement for the delivery of a performance or payment bond for construction of a public improvement, other than in cases of emergencies;
- C. **Appeals of Debarment and Prequalification of Decisions.** Hear properly filed appeals of the Purchasing Manager’s determination of debarment or prequalification;
- D. **Rulemaking.** Adopt contracting rules under ORS 279A.065 and ORS 279A.070 including, without limitation, rules for the procurement, management, disposal and control of goods, services, personal services and public improvements; and
- E. **Award.** Award all contracts that exceed the authority of the Purchasing Manager. Such contract awards may expressly delegate to the Administrator or Chair, the authority to approve a specific contract without further Board action.

**Section 4. Public Contracts – Attorney General Model Rules.**

The Model Rules adopted by the Attorney General under ORS 279A.065 (Model Rules) are hereby adopted as the public contracting rules for Q-LIFE, to the extent that the Model Rules do not conflict with the provisions of this Resolution, including any amendments to this Resolution.

**Section 5. Public Contracts – Authority of Purchasing Manager.**

- A. **General Authority.** The Administrator shall be the Purchasing Manager for Q-LIFE and is hereby authorized to issue all solicitations and to award all Q-LIFE contracts for which the contract price does not exceed \$100,000. Said contracts shall be within budgetary restraints. Subject to the provisions of this Resolution, the Purchasing Manager may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Oregon Public Contracting Code or otherwise convenient for Q-LIFE’s contracting needs. The Purchasing Manager shall hear all solicitation and award protests.
- B. **Change Orders and Amendments.**
  - (1) **Non-compensation.** The Administrator may execute any amendment extending the contract period or changing terms other than compensation.
  - (2) **Compensation.** The Administrator may execute amendments or change orders not exceeding the following:
    - (a) The original contract amount plus 25% or \$50,000, whichever is greater, based on the aggregate amount of the contract, plus all change orders and extra work; or

(b) The amount expressly authorized by the Board at the time the contract is approved. If this authorization is used, the person delegated the authority to authorize the amendments or change order(s) shall formally advise the Board of all change order(s) made.

- C. Delegation of Purchasing Manager's Authority.** Any of the responsibilities or authorities of the Purchasing Manager under this Resolution to conduct solicitations and enter into contracts may be delegated by written directive with respect to contracts up to \$50,000.00 and subject to the provisions of this document.
- D. Mandatory Review of Rules.** Whenever the Oregon State Legislative Assembly enacts laws that cause the Attorney General to modify its Model Rules, the Purchasing Manager and Q-LIFE Counsel shall review the Public Contracting Regulations, other than the Model rules, and recommend to Q-LIFE Board of Directors any modifications required to ensure compliance with statutory changes.

## **Section 6. Public Contracts – Definitions.**

The following terms used in these regulations shall have the meaning set forth below.

**Award** means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on Q-LIFE until the contract is executed and delivered by Q-LIFE.

**Bid** means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

**Contract price** means the total amount paid or to be paid under a contract, including any approved alternates, any fully executed change orders or amendments.

**Cooperative procurement** means procurement conducted by or on behalf of one or more contracting agencies.

**Debarment** means a declaration by the Purchasing Manager under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for Q-LIFE's public contracts for a prescribed period of time.

**Disposal** means any arrangement for the transfer of property by Q-LIFE under which Q-LIFE relinquishes ownership.

**Emergency** means circumstances that: create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and require prompt execution of a contract to remedy the condition.

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

**Informal solicitation** means a solicitation made in accordance with Q-LIFE's Public Contracting Regulations to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three written quotes or proposals.

**Invitation to bid** means a publicly advertised request for competitive sealed bids.

**Model Rules** means the public contracting rules adopted by the Attorney General under ORS 279A.065.

**Offeror** means a person who submits a bid, quote or proposal to enter into a public contract with Q-LIFE.

**Oregon Public Contracting Code** means ORS chapters 279A, 279B and 279C.

**Person** means a natural person or any other private or governmental entity, having the legal capacity to enter into a binding contract.

**Proposal** means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A Proposal may be made in response to a request for proposals or under an informal solicitation.

**Personal services contract** means a contract with an independent contractor predominantly for services that require: special training or skill; certification; technical, creative, professional or communication skills or talents; unique and specialized knowledge; or the exercise of judgment skills; previously acquired uniquely applicable knowledge, insights or work product with Q-LIFE that would substantially reduce time required to reach peak performance; and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, landscaping designers, artists, designers, computer programmers, performers, consultants and property managers. The Purchasing Manager shall have authority and discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.

**Public contract** means a sale or other disposal, or a purchase, lease, rental or other acquisition, by Q-LIFE of personal property, services (including personal services), public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.

**Public improvement** means a project for construction, reconstruction or major renovation on real property by or for Q-LIFE. "Public improvement" does not include:

- (1) Projects for which no funds of Q-LIFE are directly or indirectly used, including projects for which participation is incidental or related primarily to project design or inspection; or

(2) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a public improvement.

**Purchasing Manager** means the Administrator, or designee appointed by the Administrator, to exercise the authority of the Purchasing Manager under these public contracting regulations.

**Qualified pool** means a pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services. The pool may be created by Q-LIFE, the State of Oregon or any Oregon local government entity.

**Quote** means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.

**Request for proposals** means a publicly advertised request for sealed competitive proposals.

**Services** means and includes all types of services (including construction labor) other than personal services.

**Solicitation** means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to Q-LIFE with respect to a proposed project, procurement or other contracting opportunity. The word “solicitation” also refers to the process by which Q-LIFE requests, receives and evaluates potential contractors and awards public contracts.

**Solicitation Agent** means, with respect to a particular solicitation or contract, Q-LIFE employee charged with responsibility for conducting the solicitation and making an award, or making a recommendation on award to the Purchasing Manager or Q-LIFE Board of Directors.

**Solicitation documents** means all informational materials issued by Q-LIFE for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.

**Standards of responsibility** means the qualifications of eligibility for award of a public contract. An offeror meets the standards of responsibility if the offeror has:

(1) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to establish the capability of the offeror to meet all contractual responsibilities;

(2) A satisfactory record of performance; the Solicitation Agent shall document the record of performance of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;

(3) A satisfactory record of integrity; the Solicitation Agent shall document the record of integrity of an offeror if the Solicitation Agent finds the offeror to be not responsible under this paragraph;

(4) Qualified legally to contract with Q-LIFE;

(5) Supplied all necessary information in connection with the inquiry concerning responsibility; if an offeror fails to promptly supply information requested by the Solicitation Agent concerning responsibility, the Solicitation Agent shall base the determination of responsibility upon any available information or may find the offeror non-responsible; and

(6) Not been debarred by Q-LIFE and, in the case of public improvement contracts, has not been listed by the Construction Contractors Board as a contractor who is not qualified to hold a public improvement contract.

(7) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.

**Surplus property** means personal property owned by Q-LIFE which is no longer needed for use by the department to which such property has been assigned or by any other Q-LIFE department.

#### **Section 7. [Reserved]**

**Section 8. Public Contracts – Solicitation Methods for Classes of Contracts.** The following classes of public contracts, and the method(s) that are approved for the award of each of the classes, are hereby established by Q-LIFE Board of Directors.

**A. Purchases from Nonprofit Agencies for Disabled Individuals.** Q-LIFE shall give a preference to goods, services and public improvements available from qualified nonprofit agencies for disabled individuals in accordance with the provisions of ORS 279.835 through 279.850.

**B. Public Improvement Contracts.**

**(1) Any Public Improvement.** Unless otherwise provided in these regulations or approved for a special exemption, public improvement contracts in any amount may be issued only under an invitation to bid.

**(2) Non-Transportation Public Improvements Up to \$100,000.** Public improvement contracts (other than contracts for a highway, bridge or other transportation project) for which the estimated contract price does not exceed \$100,000 may be awarded using an informal solicitation for quotes.

**(3) \$100,000 Award from Qualified Pool.** Contracts for construction services for which the estimated contract price does not exceed \$100,000 may be awarded by direct appointment without competition from a Qualified Pool.

**C. Personal Services Contracts.**

**(1) Any Personal Services Contract.** Personal services contracts in any amount may be awarded under a publicly advertised request for competitive sealed proposals.

**(2) Personal Services Contracts Not Exceeding \$75,000.** Contracts for personal services for which the estimated contract price does not exceed \$75,000 in any calendar year or \$250,000 in total may be awarded in any manner, including direct selection.

**(3) Personal Service Contracts Not Exceeding \$250,000.** Contracts for personal services for which the estimated contract price does not exceed \$250,000 may be awarded using an informal solicitation for proposals.

**(4) \$250,000 Award from Qualified Pool.** Contracts for personal services for which the estimated contract price does not exceed \$250,000 may be awarded by direct appointment without competition from a Qualified Pool.

**(5) Personal Service Contracts for Continuation of Work.** Except for contracts for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, contracts of not more than \$250,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition, and by direct appointment, if the prior contract was awarded under a competitive process and the Purchasing Manager determines that use of the original contractor will significantly reduce the costs of, or risks associated with, the work.

**(6) Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying and Related Services.** Contracts for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services shall follow ORS 279C.100 to 279C.125 for selection procedures. Selection procedures for contracts estimated up to \$100,000 may be by direct appointment. Contracts that are a continuation of an ongoing project may use the direct appointment, where the total contract value is less than \$250,000, the need is a similar service required for an ongoing project, and a formal selection procedure was used for the original contract.

**(7) Local Contracting.** In contracting for personal services not covered under the requirements of ORS 279C.110(2), Q-LIFE will make reasonable efforts to spread such contracting among local, qualified persons.

**D. Hybrid Contracts.** The following classes of contracts include elements of public improvement construction as well as personal services and may be awarded under a request for proposals, unless otherwise exempt from competitive solicitation.

**(1) Design/Build and CM/GC Contracts.** Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the Purchasing Manager or designee, upon application of the Solicitation Agent, in which the Solicitation Agent submits facts that support a finding that the construction of the improvement under the proposed method is likely to result in cost savings, higher quality, reduced errors, or other benefits to Q-LIFE.

**(2) Energy Savings Performance Contracts.** Unless the contract qualifies for award under another classification in this Section, contractors for energy savings performance contracts shall be selected under a request for proposals in accordance with Q-LIFE's Public Contracting Regulations.

**E. Contracts for Goods and Services.**

**(1) Any Procurement.** The procurement of goods or services, or goods and services in any amount may be made under either an invitation to bid or a request for proposals.

**(2) Procurements Up to \$250,000.** The procurement of goods or services, or goods and services, for which the estimated contract price does not exceed \$250,000 may be made under an informal solicitation for either quotes or proposals.

**F. Contracts Subject to Award at Solicitation Agent's Discretion.** The following classes of contracts may be awarded in any manner which the Solicitation Agent deems appropriate to Q-LIFE's needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent is not required to make a record of the method of award.

**(1) Advertising.** Contracts for the placing of notice or advertisements in any medium.

**(2) Amendments.** Contract amendments shall not be considered to be separate contracts if made in accordance with the Public Contracting Regulations.

**(3) Asphaltic Concrete, Concrete and Rock.** Contracts for asphalt, concrete or rock. Where practical, competitive quotes shall be obtained.

**(4) Attorneys, Mediators and Hearings Officers.** Contracts for legal advice, mediation or to act as a hearings officer.

**(5) Ballots and Voter's Pamphlet.** The printing of ballots and ballot envelopes, including ballot pages and labeling of ballot cards and the voter's pamphlet.

**(6) Contracts Up to \$25,000.** Contracts of any type for which the contract price does not exceed \$25,000.

- (7) Copyrighted Materials and Library Materials.** Contracts for the acquisition of materials entitled to copyright, including, but not limited to works of art and design, literature and music, or materials even if not entitled to copyright, purchased for use as library lending materials.
- (8) Data processing** – Contracts for the purchase or acquisition of data processing hardware or software, including maintenance contracts or support contracts specific to that hardware or software.
- (9) Engineers, Wetland Consultants, Geotechnical Consultants and Traffic Study Consultants.** Contracts for the hire of engineers, wetland consultants, geotechnical consultants, and traffic study engineers up to \$100,000.
- (10) Equipment Repair.** Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing. A record of the method of solicitation and award is required.
- (11) Government Regulated Items.** Contracts for the purchase of items for which prices or selection of suppliers are regulated by a governmental authority.
- (12) Hazmat/Environmental Cleanup.** For cleaning up or restoring a contaminated site where the Oregon Department of Environmental Quality has issued an order that the site be cleaned up within a time limitation or an environmental site where a state or federal environmental regulator has required immediate remediation.
- (13) Insurance.** Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145. Also, Q-LIFE may appoint a licensed insurance agent (Agent of Record) to perform insurance services in connection with one or more insurance contracts. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility.
- (14) Information Technologies Support.** Contracts for maintenance, repair and technical support for computer hardware, software and networking systems.
- (15) Laboratory and Medical Supplies.** Contracts for the purchase of laboratory and medical supplies including but not limited to vaccines, medication and medical/pharmaceutical supplies.
- (16) Manufacturer Direct Supplies.** Contracts for a large volume purchase if the cost from the manufacturer is the same or less than the cost of the manufacturer charges to its distributor.
- (17) Medical and Mental Health.** Contracts for the provision of medical services, mental health services, disability care services and drug and alcohol services.

- (18) Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned property or other personal property not owned by Q-LIFE.
- (19) Petroleum Products.** Contracts for the purchase and transportation of gasoline, diesel fuel, emulsified oil, heating oil and lubricants if quotes are obtained.
- (20) Price regulated items** – Contracts for the purchase of goods or services where the rate or price is established by federal, state or local regulatory authority.
- (21) Renewals.** Contracts that are being renewed in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.
- (22) Sole Source Contracts.** Contracts for goods or services which are available from a single source may be awarded without competition.
- (23) Sponsor Agreements.** Sponsorship agreements, under which Q-LIFE receives a gift or donation in exchange for recognition of the donor.
- (24) Temporary Extensions or Renewals.** Contracts (other than contracts for public improvements) for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract.
- (25) Temporary Use of Q-LIFE-Owned Property.** Q-LIFE may negotiate and enter into a license, permit or other contract for the temporary use of Q-LIFE-owned property without using a competitive selection process if:
- (a) The contract results from an unsolicited proposal to Q-LIFE based on the unique attributes of the property or the unique needs of the proposer;
  - (b) The proposed use of property is consistent with Q-LIFE's use of the property and the public interest; and
  - (c) Q-LIFE reserves the right to terminate the contract without penalty, in the event that Q-LIFE determines that the contract is no longer consistent with Q-LIFE's present or planned use of the property or the public interest.
- (26) Temporary Workers.** Contracts for the provision of temporary workers.
- (27) Used Property up to \$150,000.** The Purchasing Manager, for procurements up to \$150,000, may contract for the purchase of used property by negotiation if such property is suitable for Q-LIFE's needs and can be purchased for a lower cost than substantially similar new property. For this purpose, the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by Q-LIFE. The Purchasing Manager shall record the findings that support the purchase.

**(28) Utilities.** Contracts for the purchase of gas, electricity, heat, water, telecommunications services, and other utilities.

**G. Contracts Required by Emergency Circumstances.**

**(1) In General.** When the Purchasing Manager determines that immediate execution of a contract within the official's authority is necessary to prevent substantial damage or injury to persons or property, the Purchasing Manager may execute the contract without competitive selection and award or Q-LIFE Board of Directors approval; provided, however, where time permits, the official shall attempt to use competitive price and quality evaluation before selecting an emergency contractor.

**(2) Reporting.** An official who enters into an emergency contract shall, as soon as possible, in light of the emergency circumstances: (1) document the nature of the emergency, the method used for selection of the particular contractor and the reason why the selection method was deemed in the best interest of Q-LIFE and the public; and (2) notify Q-LIFE Board of Directors of the facts and circumstances surrounding the emergency execution of the contract.

**(3) Emergency Public Improvements Contracts.** A public improvement contract may only be awarded under emergency circumstances if the Purchasing Manager has made a written declaration of emergency. Any Public Improvement Contract award under emergency conditions must be awarded within 60 days following the declaration of an emergency unless Q-LIFE Board of Directors grants an extension of the emergency period. Where the time delay needed to obtain a payment or performance bond for the contract could result in injury or substantial property damage, the Purchasing Manager may waive the requirement for all or a portion of required performance and payment bonds.

**H. Federal and State Purchasing Programs.** Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") or State Purchasing through Oregon Procurement Information Network ("ORPIN").

**I. Cooperative Procurement Contracts.** Cooperative procurements may be made without competitive solicitation as provided in the Oregon Public Contracting Code.

**J. Surplus Property.**

**(1) General Methods.** Surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of Q-LIFE. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to Q-LIFE. The Solicitation Agent shall maintain a record of the reason for the disposal method selected and the manner of disposal, including the name of the person to whom the surplus property was transferred.

- (a) **Governments.** Without competition, by transfer or sale to another Q-LIFE department or public agency.
  - (b) **Auction.** By publicly advertised auction to the highest bidder.
  - (c) **Bids.** By publicly advertised invitation to bid.
  - (d) **Liquidation Sale.** By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
  - (e) **Fixed Price Sale.** The Solicitation Agent may: establish a selling price based upon an independent appraisal or a generally accepted, published schedule of values; schedule and advertise a sale date; and sell to the first buyer meeting the sales terms.
  - (f) **Trade-In.** By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
  - (g) **Donation.** By donation to:
    - (i) Any organization operating within or providing a service to residents of Q-LIFE which is recognized by the Internal Revenue Code Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
    - (ii) Any sheltered workshop, work activity center or group care home which operates under contract or agreement with, or grant from, any State agency and which is certified to receive federal surplus property.
- (2) **Disposal of Property with Minimum Value.** Surplus property which has a value of less than \$5,000, or for which costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.
- (3) **Personal-Use Items.** An item (or indivisible set of items) of specialized and personal use, other than police officer's handguns, with a current value of less than \$100 may be sold to a retired or voluntarily terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Manager.
- (4) **Restriction on Sale to Q-LIFE Employees.** Q-LIFE employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

- (5) **Conveyance to Purchaser.** Upon the consummation of a sale of surplus personal property, Q-LIFE shall, at the written request of purchaser, make, execute and deliver, a bill of sale signed on behalf of Q-LIFE, conveying the property in question to the purchaser and delivering possession, or the right to take possession, of the property to the purchaser.

**Section 9. Public Contracts – Informal Solicitation Procedures.** Q-LIFE may use the following procedure for informal solicitation in lieu of the procedures set forth in the Model Rules.

**A. Informally Solicited Quotes and Proposals.**

- (1) **Solicitation of Offers.** When authorized by these regulations, an informal solicitation may be made by general or limited advertisement to a certain group of vendors, by direct inquiry to persons selected by the Solicitation Agent, or in any other manner which the Solicitation Agent deems suitable for obtaining competitive quotes or proposals. The Solicitation Agent shall deliver or otherwise make available to potential offerors, a written scope of work or specifications, a description of how quotes or proposals are to be submitted and description of the criteria for award.
- (2) **Award.** The Solicitation Agent shall attempt to obtain a minimum of three written quotes or proposals before making an award. If the award is made solely on the basis of price, the Solicitation Agent shall award the contract to the responsible offeror that submits the lowest responsive quote. If the award is based on criteria other than or in addition to price, the Solicitation Agent shall award the contract to the responsible offeror that will best serve the interest of Q-LIFE, based on the criteria for award.
- (3) **Records.** A written record of all persons solicited and offers received shall be maintained. If three offers cannot be obtained, a lesser number will suffice, provided that a written record is made of the effort to obtain the quotes.

**B. Qualified Pools.**

- (1) **General.** To create a qualified pool, the Purchasing Manager may invite prospective contactors to submit their qualifications to Q-LIFE for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including personal services, and public improvements.
- (2) **Advertisement.** The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general circulation in Q-LIFE. If qualification will be for a term that exceeds one year or follows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at Q-LIFE's appropriate department office and on Q-LIFE's website.

- (3) Contents of Solicitation.** Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, without limitation, qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of Q-LIFE.
- (4) Contract.** The operation of each qualified pool may be governed by the provisions of a pool contract to which Q-LIFE and all pool participants are parties. The Contract shall contain all terms required by Q-LIFE, including, without limitation, terms related to price, performance, business registration or licensure, continuing education, insurance, and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The qualified pool contract shall describe the selection procedures that Q-LIFE may use to issue contract job orders. The selection procedures shall be objective and open to all pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the contract, participation in a qualified pool will not entitle a participant to the award of any Q-LIFE contract.
- (5) Use of Qualified Pools.** Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the Purchasing Manager shall award all contracts for goods or services of the type for which a qualified pool is created from among the pool's participants, unless the Purchasing Manager determines that best interests of Q-LIFE require solicitation by public advertisement, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.
- (6) Amendment and Termination.** The Purchasing Manager may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
- (7) Protest of Failure to Qualify.** The Purchasing Manager shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to Q-LIFE Board of Directors in the manner described in Section 13.

**Section 10. Public Contracts – Bid, Performance and Payment Bonds.**

- A. Solicitation Agent May Require Bonds.** The Solicitation Agent may require bid security and a good and sufficient performance and payment bond even though the contract is of a class that is exempt from the requirement.
- B. Bid Security.** Except as otherwise exempted, the solicitations for all contracts that include the construction of a public improvement and for which the estimated contract price will exceed \$100,000 shall require bid security or, in the case of

contracts for highways, bridges and other transportation projects, more than \$50,000. Bid security for a request for proposal may be based on Q-LIFE's estimated contract price.

**C. Performance Bonds.**

**(1) General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a performance bond.

**(2) Contracts Involving Public Improvements.** Prior to executing a contract for more than \$100,000 that includes the construction of a public improvement, or, in the case of contracts for highways, bridges and other transportation projects, more than \$50,000, the contractor must deliver a performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond must be solely for the protection of Q-LIFE and any public agency that is providing funding for the project for which the contract was awarded.

**(3) Cash-in-Lieu.** The Purchasing Manager may permit the successful offeror to submit a cashier's check, certified check, or Q-LIFE approved irrevocable letter of credit, in lieu of all or a portion of the required performance bond.

**D. Payment Bonds.**

**(1) General.** Except as provided in these regulations, all public contracts are exempt from the requirement for the furnishing of a payment bond.

**(2) Contracts Involving Public Improvements.** Prior to executing a contract for more than \$100,000 that includes the construction of a public improvement, or, in the case of contracts for highways, bridges and other transportation projects, more than \$50,000, the contractor must deliver a payment bond equal to the full contract price, solely for the protection of claimants under ORS 279C.600.

**E. Design/Build Contracts.** If the public improvement contract is with one Person to provide both design and construction of a public improvement, the obligation of the performance bond for the faithful performance of the contract must also be for the preparation and completion of the design and related services covered under the contract. Notwithstanding when a cause of action, claim or demand accrues or arises, the surety is not liable after final completion of the contract, or longer if provided for in the contract for damages of any nature, economic or otherwise and including corrective work, attributable to the design aspect of a design-build project, or for the costs of design revisions needed to implement corrective work.

**F. Construction Manager/General Contractor Contracts.** If the public improvement contract is with one Person to provide construction manager and general contract services, in which a guaranteed maximum price may be established by an amendment authorizing construction period services following preconstruction period services, the contractor shall provide the bonds required by

Subsection A. of this section upon execution of an amendment establishing the guaranteed maximum price. Q-LIFE shall also require the contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.

**G. Surety; Obligation.** Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon and satisfactory to Q-LIFE. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to Q-LIFE or to the public agency or agencies for whose benefit the bond is issued, as specified in the solicitation documents, and shall be in a form approved by the Purchasing Manager or Q-LIFE Counsel.

**H. Emergencies.** In cases of emergency, or when the interest or property of Q-LIFE probably would suffer material injury by delay or other cause, the requirement of furnishing a good and sufficient performance bond and good and sufficient payment bond for the faithful performance of any public improvement contract may be excused, if a declaration of such emergency is made in accordance with the provisions above, unless Q-LIFE Board of Directors requires otherwise.

**Section 11. Public Contracts – Electronic Advertisement of Public Improvement Contracts.** In lieu of publication of a newspaper of general circulation in Q-LIFE area, the advertisement for an invitation to bid or request for proposals for a contract involving a public improvement may be published electronically by posting on Q-LIFE’s website.

**Section 12. Appeal of Debarment or Prequalification Decision.**

**A. Right to Hearing.** Any person who has been debarred from competing for Q-LIFE contracts or for whom prequalification has been denied, revoked or revised may appeal Q-LIFE’s decision to Q-LIFE Board of Directors as provided in in these rules.

**B. Filing of Appeal.** The person must file a written notice of appeal with Q-LIFE’s Purchasing Manager within three business days after the prospective contractor’s receipt of notice of the determination of debarment, or denial of prequalification.

(1) The written notice of appeal must be filed with the Administrator.

(2) The written appeal shall explain the basis for the appeal and include the name, address and telephone number of the party appealing.

**C. Notification of Q-LIFE Board of Directors.** Immediately upon receipt of such notice of appeal, the Purchasing Manager shall notify Q-LIFE Board of Directors of the appeal.

**D. Hearing.** The procedure for appeal from a debarment or denial, revocation or revision of prequalification shall be as follows:

- (1) Promptly upon receipt of notice of appeal, Q-LIFE shall notify the appellant of the time and place of a hearing before the Administrator;
- (2) On the basis of the hearing, the Administrator may determine to grant the appeal and reverse the debarment or prequalification denial. If the Administrator decides to recommend denial of the appeal, the Administrator shall make written findings and recommendations on the appeal to Q-LIFE Board of Directors. All persons appearing at the hearing shall be provided copies of the findings and recommendations.
- (3) Upon receipt of the Administrator's findings and recommendation, Q-LIFE Board of Directors shall conduct the hearing and shall within 30 days after receiving notice of the appeal from the Purchasing Manager grant or deny the appeal or may remand the matter back to the Administrator for further hearing; and
- (4) At the hearing, Q-LIFE Board of Directors shall consider de novo the notice of debarment, or the notice of denial, revocation or revision of prequalification, the standards of responsibility upon which the decision on prequalification was based, or the reasons listed for debarment. Board of Commissioner's consideration of the appeal shall be on the hearing record established before the Administrator, but, at Board of Commissioner's discretion, the parties may address the Board of Directors.

**E. Decision.** Q-LIFE Board of Directors shall set forth in writing the reasons for the decision.

**F. Costs.** Q-LIFE Board of Directors may allocate Q-LIFE's costs for the hearing between the appellant and Q-LIFE. The allocation shall be based upon facts found by Q-LIFE Board of Directors and stated in Q-LIFE Board of Commissioner's decision that, in Q-LIFE Board of Commissioner's opinion, warrant such allocation of costs. If Q-LIFE Board of Directors does not allocate costs, the costs shall be paid by the appellant, if the denial decision is upheld, or by Q-LIFE, if the denial decision is overturned.

**G. Judicial Review.** The decision of Q-LIFE Board of Directors may be reviewed only upon a petition in the Circuit Court of QualifyLife filed within 15 days after the date of Q-LIFE Board of Commissioner's decision.

#### **Section 14. Miscellaneous Provisions.**

Q-LIFE Board of Directors hereby determines that the provisions of ORS 279B.135 and 279C.410(7), relating to the requirement to send a notice of intent to award a contract at least seven days before the award, may be impractical with respect to some solicitations on invitations to bid; therefore, upon a determination by the Solicitation Agent that it is in the best interests of Q-LIFE to do so, a time shorter than seven days may be permitted if provided in the Solicitation Document.

