

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 820
BOARD OF EXAMINERS FOR ENGINEERING AND LAND SURVEYING

FILED

03/13/2024 3:50 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Mostly housekeeping in nature and adding water right examiners to procedural rules.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/26/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Jenn Gilbert
503-551-0323
Jenn.Gilbert@osbeels.oregon.gov

670 Hawthorne Avenue, SE
Suite 220
Salem, OR 97301

Filed By:
Jenn Gilbert
Rules Coordinator

NEED FOR THE RULE(S)

OAR 820-001-0015 Hearing Request and Answers: Consequences of Failure to Answer - Need to add water right examination to (2)(g).

OAR 820-001-0030 Purchasing and Contracting - A housekeeping edit in (4)(d) and need to add water right examination to (8) and (8)(b).

OAR 820-001-0040 Protests of Contract Award - A housekeeping edit in (1)(a).

OAR 820-005-0057 NCEES Record - Need to remove language since the NCEES is an option and not required.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Board and Committee meeting materials and minutes. The minutes are available on the Board's website and public documents are available upon request.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

There is no expectation of any concerns or effects to any particular racial group.

FISCAL AND ECONOMIC IMPACT:

There should be no negative fiscal or economic impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

- 1) The proposed amendments to the rules are not anticipated to create any additional costs of compliance for state agencies, units of government, or the general public.
- 2) The proposed amendments to the rules are not anticipated to create any additional reporting, recordkeeping, or administrative activity costs to comply.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not directly involved. However, members of the Board own, work for, or have worked for small businesses. Small businesses also have the opportunity to comment on the proposed rules through the close of the public comment period.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Meetings of the Board and its committees are public and discussions are held in open sessions. Notices and Agendas are sent to interested parties, the Board's professional associations, and posted to the Board's website.

RULES PROPOSED:

820-001-0015, 820-001-0030, 820-001-0040, 820-005-0057

AMEND: 820-001-0015

RULE SUMMARY: Proposed revisions include water right examination to (2)(g).

CHANGES TO RULE:

820-001-0015

Hearing Request and Answers: Consequences of Failure to Answer ¶

- (1) A hearing request, and answer when required, shall be made in writing to the Board by the party or the party's attorney.¶
- (2) An answer shall be made in writing to the Board with any request for a hearing on a matter related to the following categories of cases where the proposed violation(s) involves allegations of:¶
 - (a) Examination subversion or irregularities;¶
 - (b) Denials of enrollments, certificates or registrations due to lack of education or experience;¶
 - (c) Right of entry violations under ORS 672.047;¶
 - (d) Violations of rules and statutes relating to professional conduct;¶
 - (e) Negligence, gross negligence or incompetence;¶
 - (f) Stamping or signing work that was not performed under the Registrant's supervision and control; or¶
 - (g) Unlicensed practice of engineering, land surveying, photogrammetry, or water right examination.¶
- (3) The answer shall include the following:¶
 - (a) An admission or denial of each factual matter alleged in the notice; and¶
 - (b) A short, concise statement of each relevant affirmative defense the party may have.¶
- (4) When an answer is required:¶
 - (a) Factual matters alleged in the notice and not denied in the answer shall be presumed admitted;¶
 - (b) Failure to raise a particular defense in the answer will be considered a waiver of such defense;¶
 - (c) New matters alleged in the answer (affirmative defenses) shall be presumed to be denied by the agency; and¶
 - (d) Evidence shall not be taken on any issue not raised in the notice and the answer.¶
- (5) When an answer is required, the party or party's attorney may amend the response and answer, but no later than 10 days before the scheduled contested case hearing.

Statutory/Other Authority: ORS 670.310, 672.255

Statutes/Other Implemented: ORS 672.002 - 672.325

AMEND: 820-001-0030

RULE SUMMARY: The proposed revisions include a housekeeping edit in (4)(d) and adding water right examination to (8) and (8)(b).

CHANGES TO RULE:

820-001-0030

Purchasing and Contracting ¶¶

(1) The Agency may award a procurement of goods or services, including personal services of persons who are not registrants of the Board, in any manner the Agency deems practical or convenient, including by direct selection or award if:¶¶

(a) The amount of the procurement does not exceed \$15,000; or¶¶

(b) The amount of the procurement does not exceed \$35,000 and corresponds to an appropriate line item in the approved biennial budget.¶¶

(2) The Agency may, with Board approval, award a procurement of goods or services, including personal services of persons who are not registrants of the Board, that exceeds the provisions in section (1) of this rule, but does not exceed \$150,000 after seeking at least three informally solicited competitive price quotes or competitive proposals from prospective contractors, if three quotes or proposals are reasonably available. The Agency shall keep a written record of the quotes or proposals received, and of the Agency's effort to obtain quotes or proposals when three quotes or proposals are not reasonably available.¶¶

(3) The Agency shall solicit and may award a contract by requesting and evaluating competitive proposals for procurement of goods or services that exceed \$150,000, including personal services of persons who are not registrants of the Agency, only with Board approval.¶¶

(4) Any request for proposals issued under subsection (3) of this rule shall:¶¶

(a) Specify a time and date by which proposals must be received, the Agency contact person for the proposals, and a place at which the proposals must be submitted, which may include an Agency electronic mail address;¶¶

(b) Describe the procurement, including a statement of work for the procurement and any prerequisites the contractor must meet;¶¶

(c) Include all contractual terms;¶¶

(d) State that the Agency may cancel the procurement or reject ~~and~~ all proposals; and¶¶

(e) Announce the method the Agency will use to select the contractor and describe the manner in which the Agency will evaluate the proposals, which may include an award based solely on the ranking of proposals, discussions leading to best and final offers, serial negotiations, and competitive simultaneous negotiations.¶¶

(5) The Board shall give public notice of any request for proposal issued under subsection (3) of this rule. A public notice must be published electronically on the Board's website, and may be published in additional venues at the discretion of the Board or Administrator.¶¶

(6) The Agency shall keep a written record of the proposals received under subsection (3) of this rule.¶¶

(7) Notwithstanding sections (2) to (6) of this rule, the Agency may, with Board approval, solicit and award any contract for information technology personal services or information technology goods requiring professional services to install or use, regardless of the amount of the award: ¶¶

(a) In consultation with and under the oversight of the office of the Oregon State Chief Information Officer (CIO);¶¶

(b) In compliance with the CIO's rules, policies, and standards for budgeting, planning, acquiring, installing, operating and overseeing information technology; and¶¶

(c) With the CIO's oversight of information technology procurements, as set forth in ORS 279A.050(7).¶¶

(8) For personal services consultant contracts with registered professional engineers, registered professional land surveyors, ~~and registered professional photogrammetrists, and certified water right examiners,~~ the Agency may:¶¶

(a) Award a procurement of services that does not exceed \$25,000 in any manner the Agency deems practical or convenient, including by direct selection or award, so long as subsections (8)(b) and (c) of this rule are followed.¶¶

(b) Select consultants to provide engineering, land surveying ~~or~~, photogrammetric mapping, or water right examination services on the basis of the consultants' qualifications for the type of professional service required;¶¶

(c) Solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after the Agency has selected a candidate pursuant to subsection (8)(b) of this rule.

Statutory/Other Authority: ORS 670.310, 672.255

Statutes/Other Implemented: ORS 672.002 - 672.325

AMEND: 820-001-0040

RULE SUMMARY: Housekeeping edit in (1)(a) from "were" to "was".

CHANGES TO RULE:

820-001-0040

Protests of Contract Award ¶

(1) A proposer may protest the notice of intent to award a contract if:¶

(a) The proposer is adversely affected because the proposer would be eligible to be awarded the contract in the event that the protest were~~as~~ successful; and¶

(b) The grounds for the protest are:¶

(A) All lower bids or higher ranked proposals are nonresponsive; or,¶

(B) The Board has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the request for proposals.¶

(2) The proposer shall submit the protest to the Board in writing, before the contract is awarded, and shall specify the grounds for the protest to be considered by the Board.¶

(3) The Board shall consider and respond in writing to a protest before awarding a contract.

Statutory/Other Authority: ORS 670.310, 672.255

Statutes/Other Implemented: ORS 672.002 - 672.325

AMEND: 820-005-0057

RULE SUMMARY: The proposed revision removes language "requiring" an NCEES Record; submitting this record is an option for applicants.

CHANGES TO RULE:

820-005-0057

NCEES Record

An NCEES Record is a verified compilation of information, for which NCEES is the repository, that an applicant may ~~be required to~~ submit to a state licensing board as part of the licensure application process.

Statutory/Other Authority: ORS 670.310, ORS 672.107, ORS 672.255

Statutes/Other Implemented: ORS 672.002 - 672.325