




Nathan Hovekamp, Chair

Public Contracting Rules
(Resolution No. 2024-01)

Purpose

The purpose of these rules is to govern the district’s procurement of goods and services in accordance with Oregon law and in a manner that is fair, equitable, and fiscally-responsible.

Article 1
DELEGATION

1.1 Definitions

Terms used, but not defined, in these rules have the meanings given to such terms in Oregon Revised Statutes (“ORS”) Chapters 279A, 279B, and 279C (the “Public Contracting Code”) and Oregon Administrative Rules (“OAR”) Chapter 137, Divisions 46 – 49 (the “Model Rules”).

1.2 Local Contract Review Board

The district’s board of directors is the local contract review board.

1.3 Model Rules

Except as otherwise provided by these rules, the district adopts the Model Rules.

1.4 Authority

Unless expressly limited by law, the Model Rules, the local contract review board, or these rules, all authority or duties assigned to contracting agencies by the Public Contracting Code may be exercised or performed by the Executive Director (“Executive Director” means the district’s Executive Director or its designee(s)).

1.5 Approval

- (a) The local contract review board shall approve all public contract awards, and amendments which result in amended contract totals, estimated to cost \$250,000 or more, except in the event of an emergency, in which case public contracts may be awarded in accordance with section 2.6. The Executive Director may approve all public contract awards, and amendments which result in amended contract totals, estimated to cost less than \$250,000.
- (b) The Executive Director may, by written designation or administrative policy, specify the thresholds for specific district staff members to approve public contract awards or amendments.

1.6 Administrative Policy

The Executive Director shall prepare and maintain an administrative policy that specifies procedures for public contracting under these rules and shall review the administrative policy when the Public Contracting Code, Model Rules, and/or organizational needs change.

Article 2 SOURCE SELECTION

2.1 Public Contracts Generally

- (a) No financial obligation or expenditure may be incurred by the district unless the financial obligation or expenditure has: (1) budget authorization; (2) complied with these rules; and (3) approval of the appropriate signatory authority; unless the financial obligation or expenditure is required by law, board of directors' resolution, or for payroll.
- (b) No district board member, officer, employee, or agent may use their official position to obtain financial gain or avoidance of financial detriment for themselves, a relative or household member, or for any business with which the board member, officer, employee, agent, or their relative or household member is associated.

2.2 Disadvantaged, Minority, Women, and Emerging Small Business Enterprises

The district is committed to purchasing goods and services in a manner that is fair and equitable for all, supports the local economy, and removes barriers to all prospective suppliers, including those certified as a disadvantaged business enterprise, minority-owned business, woman-owned business, veteran-owned business, or emerging small business under ORS Chapter 200. The Executive Director shall develop and promote processes and procedures to provide opportunities to historically underutilized businesses in accordance with this section.

2.3 Sustainable Purchasing

The district is committed to purchasing goods and services in a sustainable manner which provides environmental, social, and economic benefits whenever possible. The Executive Director shall prepare, maintain, and implement administrative policies and procedures that enable the district to select sustainable goods and services where appropriate.

2.4 Personal Services

- (a) The Executive Director, acting on behalf of the district, may award Personal Services Contracts for services other than Professional Design Services where the contract's dollar value does not exceed \$250,000, without competitive bidding, however, unless deemed impractical, the Executive Director shall use competitive processes whenever comparable options are available within the open market to ensure best value. If competitive processes are deemed impractical, the Executive Director shall document the reasons why in the procurement file. Contracts for Personal Services Contracts for services other than Professional Design Services exceeding \$250,000 must be awarded under the procedures of ORS 279B.060, OAR 137-047-0260, and where applicable, OAR 137-047-0261.
- (b) The Executive Director, acting on behalf of the district, may award Professional Design Services under the procedures of ORS Chapter 279C and Division 48 of the Model Rules.

(c) In these rules, the following definitions apply:

“Personal Services” means services performed by accountants, attorneys, auditors, architects, engineers, photogrammetrists, transportation planners, land surveyors, other licensed professionals, computer programmers, artists, graphic designers, performers, consultants, and other services as determined by the Executive Director which require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgement, and for which the quality of the service depends on attributes that are unique to the service provider.

“Personal Services Contracts” means contracts for the provision of Personal Services.

“Professional Design Services” means Personal Services that are required to be performed by an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor, and Related Services, each as defined in ORS 279C.100.

2.5 Electronic Advertising

- (a) The local contract review board finds that Electronic Advertisement (as defined in OAR 137-046-0110(14)) of public notices instead of in a newspaper of general circulation are likely to be cost-effective.
- (b) Except when a public improvement contract is estimated to cost more than \$125,000, the Executive Director is authorized to publish public notices through Electronic Advertisement when the Executive Director determines it is appropriate and consistent with the Public Contracting Code, the Model Rules, and these rules.

2.6 Emergency Procurements

- (a) The Board Chair or Executive Director may make Emergency procurements of hazardous material removal and cleanup services under the procedures of section 3.2(j) of these rules, goods or services under the procedures of OAR 137-047-0280, construction services under the procedures of OAR 137-049-0150, or Professional Design Services under the procedures of ORS 279C.110(11).
- (b) In these rules, the following definition applies:

“Emergency” means the definition provided in ORS 279A.010(f).

2.7 Cooperative Procurements

Subject to applicable local contract review board approval requirements stated in these rules, the district may purchase goods under the Oregon Cooperative Procurement Program (**“ORCPP”**) or from any similar federal or regional program including, without limitation, programs pursuant to 10 USC 281 and the E-Government Act of 2002 (Public Law 107-347). Purchases under other federal or state programs will be permitted upon a finding by the local contract review board or Executive Director, that the program is sufficiently similar to ORCPP and/or programs pursuant to the aforementioned federal laws in effectuating or promoting transfers of property between contracting agencies.

Article 3
SPECIAL PROCUREMENTS

3.1 **Sole Source**

- (a) The district may award public contracts without competition as provided for in ORS 279B.075 and OAR 137-047-0275, however, the district shall use competitive methods wherever possible to achieve best value and must document in the procurement file the reasons why a competitive process was deemed to be impractical.
- (b) If the district intends to make several purchases over an extended period of time of (1) the product of a particular manufacturer or supplier or (2) services from a particular service provider, the district must so state in the procurement file, the solicitation documents, if any, and the public notice required under OAR 137-047-0275(2). Such documentation and public notice constitute sufficient notice for subsequent purchases. The Executive Director shall not authorize a sole source procurement for a period in excess of five-years without new findings supporting continuation of the sole source procurement.

3.2 **Class Special Procurements**

The district may award a public contract under a class special procurement pursuant to the requirements of ORS 279B.085 and OAR 137-047-0285. Such procurements allow the district to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals, and/or small or intermediate procurements. The local contract review board declares the procurements listed below as class special procurements. Unless otherwise specified in a particular special procurement rule, such contracts may be awarded in any manner that the Executive Director deems appropriate to the district's needs, including, without limitation, by direct appointment. However, the district shall use competitive methods where feasible and applicable to achieve best value and where applicable shall document in the procurement file the reasons why a competitive process was deemed to be impractical. The resulting contract must be in writing and the procurement file must document the use of the class special procurement by name to identify the sourcing method. Any public contract awarded on the basis of a class special procurement which is estimated to cost \$250,000 or more shall be advertised by the district not less than seven-days prior to award of the contract during which time the district shall receive protests from affected persons and resolve all timely submitted protests in accordance with ORS 279B.400 and OAR 137-047-0700.

- (a) **Advertising (Purchase Of).** The Executive Director, acting on behalf of the district, may purchase media advertising, regardless of dollar value, without competitive bidding.
- (b) **Advertising (Sale Of).** The Executive Director, acting on behalf of the district, may authorize the sale of advertising in district publications, district facilities, and for district activities, regardless of dollar value, without competitive bidding.
- (c) **Concession Agreements.** The district may enter into contracts that grant a franchise or concession to a private entity, individual, or other government agency to promote or sell, for its own business purposes, specified types of goods or services from district property and under which the concessionaire or promoter makes payments to the district based, at least in part, on

the concessionaire's revenues from sales or the value of such promotion to the sponsor's business, whether on or off district property. A concession agreement does not include an agreement which represents a rental, lease, license, permit, or other arrangement for the use of public property. Concession agreements may be awarded by any method deemed appropriate by the Executive Director, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

- (d) **Copyrighted and Library Materials.** The Executive Director, acting on behalf of the district, may purchase copyrighted materials when there is only one known supplier available for such goods. This includes, without limitation, new books, periodicals, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.
- (e) **Disposal of Abandoned, Seized, and/or Non-Owned Property.** Contracts or arrangements for the sale or other disposal of abandoned, seized, and/or other personal property not owned by the district at the time the district obtains possession of such property are not subject to competitive procurement procedures. The Executive Director may select any method of disposal including, without limitation, donation to a charitable organization.
- (f) **Disposal of Surplus Property.**
 - (1) **Methods.** Surplus property may be disposed of by any commercially reasonable method upon a determination by the Executive Director that the method of disposal is in the best interests of the district. Factors that may be considered by the Executive Director include, without limitation, costs of sale, administrative costs, and public benefits to the district. The Executive Director will 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. For the purpose of this rule, "commercially reasonable method" includes, without limitation, transfer or sale to another agency, auction, bid, liquidation sale, fixed-price sale, trade-in, donation, and any other method determined reasonable under the circumstances by the Executive Director.
 - (2) **Disposal of Property with Minimal Value.** Surplus property which has a value of less than \$500, or for which the 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. Prior to disposing of property pursuant to this subsection (2), the district official proposing to dispose of the property will obtain a written confirmation from another district official determining that the value of the property is less than \$500 or that the cost of selling the property is likely to exceed sale proceeds. The district official making the disposal will make a record of the value of the item and the manner of disposal.
 - (3) **Restriction on Sale to District Employees.** District staff are not restricted from competing, as members of the public, for the purchase of publicly-sold surplus property, but will 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.
- (g) **Donated Materials and/or Services.** The district may accept donated services and/or materials regardless of dollar value under the following circumstances: (1) the donor has agreed to donate all, or a portion of, the materials and/or services necessary to complete a project; and (2) the

donor enters into an agreement with the district whereby the donor agrees to comply with public contracting requirements applicable to the particular project and any requirements that the district deems necessary or beneficial.

- (h) **Equipment Repair and Overhaul.** The Executive Director, acting on behalf of the district, may purchase equipment repair or overhaul services and parts without competitive bidding where the contract's dollar value does not exceed \$250,000 subject to the following conditions:
- (1) unless deemed impractical, the Executive Director shall use competitive processes whenever comparable options are available within the open market to ensure best value;
 - (2) service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; and/or
 - (3) service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source.
- (i) **Gasoline, Diesel Fuel, Heating Oil, Lubricants, and Asphalt.** The district may enter into contracts for gasoline, diesel fuel, heating oil, lubricants, and/or asphalt without competitive bidding subject to the following: (1) prior to selection of the contractor, the district obtains quotes (written or oral) from at least three suppliers in the area; and (2) the district makes its purchase from the least expensive source of those providing quotes.
- (j) **Hazardous Material Removal and Cleanup.** The Executive Director, acting on behalf of the district, may purchase services to remove or clean up hazardous material or oil from any supplier in an Emergency or when ordered to do so by the Oregon Department of Environmental Quality (DEQ) pursuant to its authority under ORS Chapter 466, conditioned on the following:
- (1) to the extent reasonable under the circumstances, the district will encourage competition by attempting to obtain informal price quotations or proposals from potential service providers;
 - (2) the district department responsible for managing or coordinating the cleanup will prepare a written description of the circumstances that require the cleanup and/or a copy of the DEQ order for the cleanup to the Executive Director, together with a request for contract authorization; and
 - (3) the district department responsible for managing or coordinating the cleanup will record in the procurement file whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the contractor to whom award is made.
- (k) **Information Technology.** The Executive Director, acting on behalf of the district, may enter into information technology contracts, including contracts for hardware and software, where the contract's dollar value does not exceed \$250,000, without competitive bidding, however, unless deemed impractical, the Executive Director shall use competitive processes whenever comparable options are available within the open market to ensure best value.

- (l) **Insurance (Employee Benefit).** The district, may purchase employee benefit insurance and other insurance without competitive bidding, regardless of dollar amount, subject to the terms of any collective bargaining agreement between the district and represented employee groups.
- (m) **Legal Services.** The district may enter into contracts for legal services with licensed attorneys without competitive bidding regardless of dollar value when the district's needs require the unique and specialized knowledge and experience of a particular attorney or law firm.
- (n) **Purchases Under Federal Contracts.** When the price of goods and services has been established by a contract of the federal government pursuant to a federal contract award, the Executive Director, acting on behalf of the district, may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In exercising its authority under this special procurement, the district will obtain and document permission from the appropriate federal agency to purchase under the federal contract and document the cost savings to be gained for the district from the anticipated purchases under the federal contract. The district will not contract pursuant to this rule in the absence of a cost savings to the district by using this method.
- (o) **Requirements Contracts (Price Agreements).** The Executive Director, acting on behalf of the district, may establish requirements contracts for the purposes of minimizing paperwork, achieving continuity of products, securing a source of supply, reducing inventory, combining the district requirements for volume discounts, standardization among district departments, and/or reducing lead time for ordering. Purchases under requirements contracts may be utilized in accordance with the following:
- (1) the requirement contract must have originally been procured by competitive bidding unless otherwise allowed by these rules;
 - (2) the district may purchase the goods or services from the awarded contractor without first undertaking additional competitive procurement procedures; and
 - (3) the term of any requirements contract, including renewals, will not exceed five years unless otherwise exempted pursuant to ORS 279B.085.
- (p) **Sponsorship Agreements.** Sponsorship agreements under which the district receives or makes a gift, donation, or consideration in exchange for official recognition may be awarded by any method deemed appropriate by the district, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
- (q) **Telecommunications Services.** The Executive Director, acting on behalf of the district, may enter into public contracts for telecommunications services, regardless of dollar value, without competitive bidding if no competition exists within the area for the service required. To determine whether competition exists, the Executive Director will consider the following factors:
- (1) determination of alternative providers available within the geographic and service market area;
 - (2) the extent to which alternative services offered are comparable or substitutable in technology, service provided, and performance; and

- (3) the extent to which alternative providers can respond to the district's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management, and limiting the district's liability.
- (r) **Telecommunications Systems.** The Executive Director, acting on behalf of the district, may enter into telecommunications systems contracts, including contracts for hardware and/or software, where the contract's dollar value does not exceed \$250,000, without competitive bidding, however, unless deemed impractical, the Executive Director shall use competitive processes whenever comparable options are available within the open market to ensure best value.
- (s) **Temporary Extensions or Renewals.** The district may enter into contracts 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, other than contracts for public improvements, without competitive bidding.
- (t) **Temporary Use of District Property.** The district may negotiate and enter into a license, permit, and/or other contract for the temporary use of district-owned property without using a competitive selection process under the following circumstances:
- (1) the contract results from an unsolicited proposal to the district based on the unique attributes of the property or the unique needs of the proposer;
 - (2) the proposed use of the property is consistent with the district's use of the property and the public interest; and
 - (3) the district reserves the right to terminate the license, permit, and/or other contract without penalty, in the event that district determines that the arrangement is no longer consistent with the district's present or planned use of the property or the public interest.
- (u) **Use of Existing Contractors.** When a public improvement needs minor alteration, repair, or maintenance at or near the site of work being performed by a district contractor, the district may hire that contractor to perform such work subject to the following:
- (1) the contractor was selected through a selection process permitted by these rules;
 - (2) the Executive Director first obtains a price quotation for the additional work from the contractor that is competitive and reasonable;
 - (3) the total cost of the proposed work will not exceed the threshold specified in ORS 279C.335(d); and
 - (4) the original contract is amended to reflect the new work and is approved by the Executive Director before work begins.
- (v) **Used Personal Property.** The Executive Director, acting on behalf of the district, may purchase used personal property and equipment, regardless of dollar value, without competitive bidding if such property is suitable for the district's needs and can be purchased for a lower cost than substantially similar new property. The district's research determining that the used personal property can be purchased for a lower cost than substantially similar new property must be

documented in the procurement file. For the purpose of this class special procurement, the cost of used personal property will be based upon the life-cycle cost of the property over the period for which the property will be used by the district.

