

# 1. Public Contracting Rules: General

## A. Purpose

Oregon Public Contracting Code (ORS 279) requires that public bodies, like the Lake County Library District, issue public contracts for goods, services, and public improvements in an ethical and efficient manner that encourages impartial and open competition. The Oregon Attorney General provides Model Rules for Public Contracting in Divisions 46-49 (“Model Rules”) which give additional guidance on the procedures that must be followed. Under Public Contracting Code, public bodies may adopt Public Contracting Rules different from the Model Rules.

The Lake County Library District has adopted as its public contracting rules ORS 279, A, B and C and the Attorney General’s Model Public Contracting Rules, OAR Chapter 137, Division 46 (General Provisions Related to Public Contracting), Division 47 (Public Procurements For Goods or Services), Division 48 (Consultant Selection: Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services), Division 49 (General Provisions Related to Public Contracts for Construction Services), subject to the exceptions provided in this Public Contracting Rules document (“Rules”). These Rules shall be in addition to, and shall supersede any conflicting provisions in, the Model Rules. For convenience, some summary of Model Rules is also provided in these Rules.

## B. Definitions

- “Award” means the selection of a person to provide goods, services or public improvements for a specified price or prices.
- “Bid” means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.
- “Bidder” means a person that submits a bid in response to an invitation to bid.
- “Board of Directors” means the Board of Directors for the Lake County Library District.
- “Contracting agency,” means a public body authorized by law to conduct procurement.

- “Contract Review Board” means the Board of Directors for Lake County Library District.
- “Days” means calendar days.
- “District” means the Lake County Library District, a political subdivision of the State of Oregon.
- “Exemptions” mean exemptions from the formal competitive selection procedures for public improvement contracts and personal service contracts for architects, engineers, land surveyors, and related services, as well as contracts and classes of contracts designated as “special procurements” under ORS 279B.085.
- “Person” means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a for profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.
- “Personal Services” means services described as follows:
  - Personal services shall mean services that call for specialized skills, knowledge and resources in the application of highly technical or scientific expertise or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary. In addition to the general description of personal service contracts, the following classes of contracts are personal service contracts: Contracts for services performed as an independent contractor in a professional capacity, including but not limited to: the services of an accountant, attorney, architect, architectural or land use planning consultant, construction manager, information technology consultant, registered professional engineer, financial/investment/insurance advisor, underwriter, appraiser or surveyor, data processing consultant.
  - Personal Services Contracts Do Not Include: Contracts primarily for equipment, supplies or materials. For example, a contract to supply all hardware and standard software is not a Personal Services Contract, but a contract with a technology consultant to design or develop a new computer system is a Personal Services Contract.

- “Public Improvement” means projects for construction, reconstruction, or major renovation on real property by or for the District. “Public Improvement” does not include emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a public improvement.
- “Public Contract” means any purchase, lease, or sale by the District of personal property, public improvements, or services other than agreements, which are for personal and professional services.
- “Proposal” means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or an informal solicitation.
- “Quote” means a price offer made in response to an informal solicitation to provide goods, services or public improvements.
- “Request for Proposal” (RFP) means the solicitation of written competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specifications and price will not necessarily be predominant award criteria.

### C. Delegation of Authority

Except when otherwise provided in these Rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the public agency's Board of Directors.

Unless otherwise limited by the Local Contract Review Board or these Rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the Library Director, Board President, or his/her designee, including the authority to enter into emergency contract pursuant to ORS 279B.080 and 279C.320(1).

All public contracts estimated to cost \$5,000 or more in a calendar year must be approved by the Board of Directors. All public contracts estimated to cost less than \$5,000 in a calendar year may be entered into by the Library Director, Board President, or designee without Board approval. However, either the Library Director or the Board President may enter into emergency contracts or designee pursuant to Section E below of these Rules, regardless of dollar limits, subject to ORS 294.481.

## E. Emergency Contract

Emergency shall be defined as follows: “Circumstances that:

- A. could not have reasonably been foreseen;
- B. create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and
- C. require prompt execution of a contract to remedy the condition.

The Library Director or the Board President shall have authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor shall be documented. Emergency contracts may be awarded as follows.

### 1. *Goods and Services*

Emergency contracts for procurements of goods and services may be awarded pursuant to ORS 279B.080 and the Delegation of Authority Section of these Rules.

### 2. *Public Improvements*

The Board of Directors hereby adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.

## G. Electronic Advertising

Pursuant to ORS 279B.055C(4c) and ORS 279C.360, electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost-effective to do so. The Library Director, Board President, or designee shall have the authority determine when electronic publication is appropriate and consistent with the District’s public contracting policies (OAR 137-47-0270(3)).

## H. Surplus Property

Surplus property is defined as any personal property of the District that has been determined by the Library Director, Board President, or designee as being of no use or value to the District.

- For items with a current estimated value of less than \$500:
  - The Library Director or designee may declare that such property is of no further use or value to the district and is “surplus.” The Library Director or designee may use any method outlined below to dispose of the surplus property.
- For items with a current estimated value of \$500:
  - The Library Director shall submit a request to the Board of Directors for a declaration that certain property is of no further use or value to the District. The Board of Directors shall, by resolution, declare such property "surplus" and authorize the means by which the Library Director or designee may dispose of the property, including granting the Library Director or designee discretion to dispose of the property in any appropriate manner. The Board of Directors may require the Library Director or designee to obtain an appraisal of the property prior to disposition.

### *Disposal*

Surplus property may be disposed of in the manner that is most advantageous to the District or the community at large, including, but not limited to, the methods outlined below. Generally, when choosing a non-competitive process, the District shall find that the chosen disposition will substantially promote the public interest in a way that a competitive solicitation process could not practically realize. This could be through cost savings to the District or a predicted higher net return than a competitive process would yield.

Generally, surplus property may only be obtained by an employee for personal use when the public has the same access to the surplus property as the employee.

- *Donation*

Surplus property may be donated or sold to any nonprofit organization, and any other local government, any local community organization to be used for a public purpose, or any state or federal program created to dispose of or liquidate surplus property.
- *Trade*

Surplus property may be traded for property the District wishes to obtain.

- *Advertised Sale*  
Surplus property may be sold in an advertised sale such as through a classified or online ad.
- *Public Auction*  
Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the property.
- *Disposal*  
Surplus property determined to be of insufficient value to merit another method of disposition may be disposed of in any appropriate manner. Encouraging reuse or recycling of items is preferable to landfill disposal.

## 2. Public Contracting Rules: Goods and Services

### A. Purpose

The purpose of this policy is to establish guidelines regarding the purchasing of goods and non-personal services, governed by State statute, primarily ORS 279A and 279B as modified and adopted by the Board of Directors.

### B. Small Procurements (Under \$10,000)

Pursuant to ORS 279B.065, public contracts under \$10,000 are not subject to competitive bidding requirements. The Library Director, Board President, or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District. For procurements less than \$500, quotes are not necessary.

The District may amend a public contract awarded as a small procurement beyond the \$10,000 limit in accordance with OAR 137-047-0800.

### C. Intermediate Procurements (Between \$10,000 and \$150,000)

A contract for procurement of goods and services estimated to cost between \$10,000 and \$150,000 in a calendar year may be awarded according to the processes for intermediate procurements described in ORS 279B.070. This means the District shall, at a minimum, obtain three competitive quotes based on written specifications. A written record of the sources of the quotes or proposals received shall be kept. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain quotes.

The District may amend a public contract awarded as an intermediate procurement beyond the stated limitations in accordance with OAR 137-047-0800, provided the cumulative amendments shall not increase the total contract price to a sum that is greater than 125% of the original contract price.

#### **D. Competitive Bids (\$150,000 and over)**

When the actual Contract amount exceeds \$150,000, the District shall proceed with a formal competitive bidding procedure, which includes budget authority, developing specifications, advertising, formal bid opening, bid analysis and bid award to the lowest responsible bidder.

#### **E. Special Procurements and Exemptions**

The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.

#### **F. Sole Source Procurement**

When necessary, the District's Local Contract Review Board, Library Director, or designee may enter into a sole source procurement pursuant to ORS 279B.075.

#### **G. Purchases from Federal Catalogs**

Subject to applicable Board approval requirements stated in the District's Contracting Rules, the District may purchase goods from federal catalogues without competitive bidding when the procurement is pursuant to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal laws will be permitted upon a finding by the Local Contract Review Board that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

#### **H. Purchasing Through Government Agency Contracts (Cooperative Procurements)**

Whenever feasible, the District may purchase from contracts available through governmental agencies, which includes, but is not limited to State, City, County, and Special Districts. Contracts between agencies utilizing an existing solicitation or current requirement requires that:

- A. The original contract meets competitive procurement requirements.
- B. The original contract identifies the cooperative procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements, and
- C. No material change is made in the terms, conditions or prices of the contract from the original contract.

## I. Appeals of Prequalification Decisions and Debarment Decisions

Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additions procedures shall apply to hearing on such decisions by the LCRB:

1. Notice shall be submitted in writing to the Board President. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
2. Upon opening the hearing, District staff shall explain the District's decision being appealed and the justification thereof. The Appellant shall then be heard. Time for the appellant's testimony shall be established by the Board President. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board President.
3. Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District's decision shall be provided time to be heard, with time limits established by the Board Chair. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board Chair shall close the hearing.
4. When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

### 3. Public Contracting Rules: Personal Services

#### A. Purpose

The purpose of this policy is to establish guidelines for authorization regarding personal services contracts, governed by State statutes, primarily ORS 279A and 279C, as modified and adopted by the Board of Directors.

The Board of Directors define "personal services" in section 1. B. of these Rules. The Library Director, Board President, or designee shall have the authority to determine whether a particular service is a "personal service" under the definition of these Rules.

#### A. Personal Services Contracts under \$25,000

Except as provided in Section C, below, non-exempt personal services contracts, including contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, for a contract amount of less than \$25,000 may be awarded from proposals that are solicited informally, either orally or in writing.

If it is practicable, proposals shall be solicited from a sufficient number of qualified prospective proposers to ensure that no fewer than three (3) qualified proposers submit proposals. If fewer than three (3) qualified proposers submit proposals, the efforts made to solicit proposals shall be documented in the District's files. Price may be considered, but not be the determining factor. Proposals may also be solicited in using a written request for proposal, at the District's discretion. The Selection may be based on criteria including but not limited to, each proposer's:

- a. Particular capability to perform the services required;
- b. Experienced staff available to perform the services required, including each proposer's recent, current and projected workloads;
- c. Performance history;
- d. Approach and philosophy used in providing services;
- e. Fees or costs; and

- f. Geographic proximity to the project or the area where the services are to be performed.

## **B. Personal Services Contracts \$25,000 and Over**

Except as provided in Section C, below, non-exempt personal services contracts, for a contract amount of \$25,000 or greater shall be awarded according to the procedures described in ORS 279B.060 and OAR 137-047-0260.

## **C. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.**

### ***1. Direct Appointment Process (Under \$20,000)***

A contract for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services may be entered into by direct appointment if such contract is estimated not to exceed \$20,000 in a calendar year, or if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.

The appointment can include but is not limited to the Districts current list of consultants or another public contracting agency's current list of consultants, pursuant to an interagency or intergovernmental agreement.

### ***2. Informal Selection Process (Under \$150,000)***

When the estimated cost of services is under \$150,000 and the direct appointment process is not used, the informal selection procedure set forth in OAR 137-048-210 shall be used.

### ***3. Formal Selection Process (\$150,000 and Over)***

When the estimated cost of services is expected to reach or exceed \$150,000, the formal selection procedure set forth in OAR 137-048-0220 will be used.

## D. Exempt Personal Services Contracts

Personal Services contracts existing on the effective date of these Rules are exempt and hereby extended by direct appointment. Contracts for accounting, legal, underwriting, and investments, financial and insurance advising services are exempt.

## 4. Public Contracting Rules: Public Improvements

### A. Purpose

The purpose of this policy is to establish guidelines regarding contracting for public improvements projects, governed by State statute, primarily ORS 279A and 279C, as modified by the Board of Directors in these Rules. Rules regarding architectural and engineering services are addressed in the Section 3 above.

The Board of Directors define "public improvement" in section 1. B. of these Rules. The Library Director, Board President, or designee shall have the authority to determine whether a particular service is a "personal service" under the definition of these Rules.

### B. Small Procurements (Under \$10,000)

When the actual amount of the public improvement contract does not exceed \$10,000 the District is exempt from competitive bidding, pursuant to ORS 279B.065; however the District shall, when practical, obtain competitive quotes.

### C. Intermediate Procurements (Between \$10,000 and \$150,000)

When the actual amount of the public improvement contract is more than \$10,000, but not more than \$150,000, the District shall, at a minimum, obtain three competitive quotes from written specifications. A written record of the sources of the quotes or proposals received shall be kept. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

### D. Competitive Bids (\$150,000 and over)

When the actual contract amount exceeds \$150,000, the District shall proceed with a formal competitive bidding procedure, which includes budget authority, developing specifications, advertising, formal bid opening, bid analysis and bid award to the lowest responsive, responsible bidder.

## E. Special Procurements and Exemptions

The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

## F. Public Improvement Requirements

### 1. *Performance and Payment Bonds*

Public Improvement Contracts require the Contractor to execute and deliver to the agency a Performance and Payment Bond in a sum equal to the Contract Price, unless waived under ORS 279C.380(4), or exempt from the required performance bond pursuant to ORS 279C.390.

### 2. *Prevailing Wages*

Public Improvement Contracts in excess of \$50,000 require that the hourly rate of a wage paid by the contractor or subcontractor to a worker shall not be less than the prevailing rate of a wage for an hour's work in the same trade or occupation in the locality where the labor is performed.

### 3. *First-Tier Subcontractor Disclosure*

Public improvements with a contract value of more than \$100,000, require that a bidder shall submit a disclosure of any first-tier subcontractors that will be furnishing labor or materials in connection with the public improvement (ORS 279C.370), within two working hours of the date and time of the deadline when bids are due.