Port Orford-Langlois School District

Code: DJC-AR
Revised/Reviewed:

Exemptions from Competitive Bidding and Special Procurements

(Version 2)

{This optional administrative regulation is intended to provide guidance for the district in preparing a request for special procurement to the Local Contract Review Board (LCRB). This administrative regulation is not intended as procurement rules in place of the *Attorney General's Model Public Contracting Rules* or rules adopted by the LCRB.}

All public contracts shall be based upon competitive bids or proposals, except the following:

1. Contracts below threshold levels in accordance with ORS 279B.065 (small procurements for goods and services), 279B.070 (intermediate procurements for goods and services) and 279C.412 (intermediate procurements for public improvements);

2. Special procurements for goods and services in accordance with ORS 279B.085 and OAR 137-047-0285;[1]

3. Contracts which have been exempted under ORS 279A.025 and 279C.335; and

4. Any other contract exempted by law.

SPECIAL PROCUREMENTS FOR GOODS AND SERVICES

To proceed with a special procurement, the district shall submit a written request to the Board, acting as the Local Contract Review Board (LCRB). This request shall describe the contracting procedure, the goods and services or class of goods and services that are the subject of the special procurement, and circumstances that justify the use of a special procurement.

The special procurement must be unlikely to encourage favoritism in the awarding of a public contract or to substantially diminish competition for public contracts; and (A) must be reasonably expected to result in substantial cost savings to the district or to the public; or (B) must substantially promote the public interest in a matter that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065, 279B.070 or any related rules.

After LCRB approval, the district may proceed with a special procurement. Public notice of the approval of a special procurement must be given in the same manner as provided in ORS 279B.055(4). If the district intends to award a contract through special procurements that calls for competition among prospective contractors, the district shall award the contract to the contractor it determines to be most advantageous to the district.

When the LCRB approves a class special procurement the district may award contracts to acquire goods and services within the class of goods and services in accordance with the terms of the approval without making a subsequent request for a special procurement.

[1] Procurement law for goods and services uses the term "special procurement." Procurement law for public improvement contracts does not use the term "special procurement," but a comparable exemption is allowed under ORS 279C.335.

The following are additional considerations and requirements for specific types of special procurements. The request submitted to the LCRB should address these provisions and satisfy any requirements.

Brand Names or Equal[2]

1. "Brand name or equal specification" means a specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics needed to meet the district's requirements and that authorizes bidders or proposers to offer goods or services that are equivalent or superior to those named or described in the specification.

2. "Brand name specification" means a specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics."

3. "Specification" means any description of the physical or functional characteristics of, or of the nature of, goods or services to be procured by a contracting agency.[3]

A brand name or equal specification may be used when the use of a brand name or equal specification is advantageous to the district because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the district. The district is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final. Nothing in the law or this administrative regulation may be construed as prohibiting the district from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the contracting agency.

A brand name specification may be prepared and used only if the district determines for a solicitation or class of solicitations that only the identified brand name specification will meet the needs of the district based on one or more of the following written determinations:

1. That use of the brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;

2. That use of a brand name specification would result in substantial cost savings to the contracting agency;

3. That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or

4. That efficient utilization of existing goods requires the acquisition of compatible goods or services.

Advertising Contracts, Purchase of[4]

The district traditionally purchases advertising in newspapers, however, the district may also purchase advertising in other media, such as radio, television or the internet. Advertising contracts may be procured without competitive procurement based on findings of:

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[2] For additional guidance, see OAR 125-247-0691.

[3] Specification may include a description of any requirement for inspecting, testing or preparing goods or services for delivery.

[4] See OAR 125-247-0288(5) for additional guidance.

1. Advertisements are placed in a particular source because of the specific audience that source serves;

2. Competition to furnish advertising space in daily newspapers of general, trade or business circulation in the vicinity of the district is limited;

3. Cost savings are difficult to quantify where the sources are unique and not interchangeable;

4. Advertisements may be placed to satisfy legal notice or Board policy requirements;

5. Other published advertisements or notices, such as routine public notices, personnel recruitment information, etc., are placed in one or more of the publications of general circulation in the local area and other publications, as appropriate;

6. The communities served by the district rely upon its use of the local daily newspaper as a central source of news and information regarding district activities; or

7. It is unknown whether contracts for advertisements placed with radio, television, the internet or other media are going to result in cost savings if not placed for competitive bid or request for proposal (RFP). If possible, savings could be obtained through competitive means, the district would attempt to obtain competitive quotes or bids, as appropriate.

Advertising Contracts, Sale of

The district may sell advertising for district publications and activities, regardless of a dollar amount, without competitive bidding, including school newspapers, yearbooks, athletic programs, drama or music programs and the like.

Sales of advertising for student activities are generally other fund revenues, where student groups solicit advertisements from local businesses to help with the cost of the activity itself. A common example is the sale of advertising in school newspapers and yearbooks. The district itself would not achieve any increased revenue to the General Fund by seeking competitive bids or proposals for such advertising. This holds true for other student activities, such as athletics, drama or music events and the like.

Equipment Repair and Overhaul[5]

The district may enter into a public contract for equipment repair or overhaul without competitive bidding when competitive procurement is not practical. This may include when service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing, or service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source. The district will use a competitive procedure to the extent practicable.

If the repair or overhaul qualifies as an emergency, the district may use emergency procurement procedures.

Copyrighted Materials

[5] For additional guidance, see OAR 127-247-0288(6).

Contracts for the procurement or distribution of textbooks are exempt from public procurement requirements. Purchase of copyrighted materials available from only one source may be procured through the sole source procedures. Requests for special procurement approval for the purchase of other copyrighted materials may be submitted to the LCRB with supporting information.

Used Personal Property or Equipment, Purchase[6]

The district may purchase used property or equipment without obtaining competitive bids or quotes, if at the time of purchase, the LCRB has determined that the purchase will result in substantial cost savings to the district or promote the public interest and will unlikely diminish competition or encourage favoritism. "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of district purchase.

Information Technology and Telecommunication Contracts[7]

The district may enter into a contract to acquire information technology hardware and software and services (including telecommunications) without competitive bidding if, the LCRB has determined that the purchase will result in substantial cost savings to the district or promote the public interest and will unlikely diminish competition or encourage favoritism.

Renegotiation of Existing Contracts with Incumbent Contractors

The district may amend or renegotiate contracts with existing vendors, service providers or other parties in accordance with OAR 137-047-0800.

EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS

Oregon law[8] allows for exceptions to competitive bidding for public improvement contracts or classes of contracts when the LCRB approves findings that:

1. The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts; and

2. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the district.

In approving a finding, the LCRB shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

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[6] For additional guidance, see OAR 125-247-0288(10). When contracting with another governmental entity, a district has a statutory exception under ORS 279A.025. The district may purchase state/federal surplus property through the Department of Administrative Services, State Services Division for Surplus Property. For more information on this program, contact DAS at 503-378-4714.

[7] For additional guidance, see OAR 127-247-0185.

[8] See ORS 279C.335.

1. How many persons are available to bid;

2. The construction budget and the projected operating costs for the completed public improvement;

3. Public benefits that may result from granting the exemption;

4. Whether value engineering techniques may decrease the cost of the public improvement;

5. The cost and availability of specialized expertise that is necessary for the public improvement;

6. Any likely increases in public safety;

7. Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement;

8. Whether granting the exemption will affect the sources of funding for the public improvement;

9. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;

10. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;

11. Whether the public improvement involves new construction or renovates or remodels an existing structure;

12. Whether the public improvement will be occupied or unoccupied during construction;

13. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and

14. Whether the contracting agency or state agency has, or has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

In granting this exemption, the LCRB shall:

1. If appropriate, direct the use of alternative contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition;

2. Require and approve or disapprove written findings by the district that support awarding a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirements. The findings must show that the exemption complies with the requirements outlined in this administrative regulation; and

3. If the procurement involves construction manager/general contractor services, require the district conduct the procurement in accordance with OAR 137-049-0690.

Notification of a proposed exemption under this section must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the date on which the LCRB intends to take action to approve or disapprove the exemption. The notice must state that in response to a written request, the district will hold a public hearing for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement.[9] If a hearing is held, the district shall offer an opportunity for any interested party to appear and comments. If the district must act promptly because of circumstances beyond the district's control that do not constitute an emergency, notification of the proposed exemption may be published simultaneously with the district's solicitation of contractors, as long as responses to the solicitation are due at least five days after the agency intends to take action to approve or disapprove the proposed exemption.

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[9] The district may hold a hearing even if there is no written request.