

## District Procurement

### 1. Contract Review Board

Pursuant to ORS 279A.060, the Board of the Lincoln County School District (the “Board”) designates the Board as the Local Contract Review Board for the Lincoln County School District. The Board shall have all of the powers granted for contracts concerning the Lincoln County School District (the “district”).

- a. The Board, acting as the Local Contract Review Board, may enact a resolution that authorizes the district to designate a public improvement as a community benefit contract per the requirements included in ORS 279C.300 to 279C.470.

2. **Pursuant to ORS 279A.065(5)(a), the model rules adopted by the Attorney General under ORS 279A.065 do not apply to the district, except where specifically noted.** Articles I through XV are adopted pursuant to the authority granted to the Board by ORS 279A.065 and ORS 279A.070 for the purpose of establishing standard procedures for awarding and entering into contract by the district. This resolution and its provisions, as may later be amended, shall constitute the means of carrying out the powers and duties of the Board under ORS Chapters 279A, 279B and 279C.

### 3. Definitions

- a. “Affected person” or “affected offeror” means a person whose ability to participate in a procurement is adversely affected by a decision of the district.
- b. “Competitive bidding” means the solicitation by the Board or public contracting officer of competitive offers which follow the formal process for advertising, bid and bid opening required of districts by Title 30 of the ORS and ORS Chapters 279A, 279B and 279C (and this policy).
- c. “Competitive quotes” means the solicitation of offers from competing vendors or providers of services. The solicitation may be made by advertisement or a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.
- d. “Competitive range” means the proposers with whom the district will conduct discussions or negotiations if the contracting agency intends to conduct discussions or negotiations pursuant to ORS 279B.060 or ORS 279C.410.
- e. “Contract review authority” means the Board or the public contracting officer.
- f. “Goods and services” has the meaning set out in ORS 279B.005.
- g. “Offer” means a written offer to provide goods or services in response to a solicitation document.
- h. “Offeror” means a person who submits an offer.
- i. “Project” means the specific task or undertaking of constructing, reconstructing, renovating, maintaining or repairing real property and/or improvements thereon, which is customarily contracted or subcontracted as a single task or undertaking.
- j. “Public contracting officer” means the superintendent or designee and shall have general supervision of all public contracts for the district.

- k. “Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition by the district 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 contract” does not include grants.
- l. “Public improvement” means a project for construction, reconstruction or major renovation on real property by or for the district. “Public improvement” does not include:
  - (1) Projects for which no funds of a contracting agency are directly or indirectly used, except for participation that 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.
- m. “Public improvement contract” means a public contract for a public improvement. “Public improvement contract” does not include a public contract for emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement.
- n. “Solicitation document” means an Invitation to Bid, Request for Proposals, Request for Quotes or other similar document issued to invite offers from prospective contractors pursuant to ORS Chapter 279B or 279C. The following are not solicitation documents unless they invite offers from prospective contractors: a Request for Qualifications, a prequalification of bidders, a request for information or a request for product prequalification. A project-specific selection document under a price agreement that has resulted from a previous solicitation document is not itself a solicitation document.
- o. “Writing” means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. “Writing,” when required or permitted by law, or required or permitted in a solicitation document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.
- p. “Written” means existing in writing.

#### 4. **Competitive Bids; Exemptions**

All Public Contracts shall be based upon formal competitive bids except:

- a. Contracts made with other public agencies or the federal government.
- b. Contracts which are for personal services. Prior to awarding a personal service contract the Board, the public contracting officer, or an agent of the Board or public contracting officer shall review the qualifications of the persons seeking to perform personal services to determine whether such persons are qualified and able to provide the services desired by the Board or the public contracting officer.
  - (1) The following are personal service contracts:
    - (a) Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant; attorney; architectural or land use planning consultant; physician or dentist; registered professional engineer; appraiser or surveyor; passenger aircraft pilot; aerial photographer; timber cruiser; or broadcaster.

- (b) Contracts for services as an artist in the performing or fine arts, including but not limited to photographer, film maker, painter, weaver, sculptor.
  - (c) Contracts for services of a specialized, creative and research oriented, noncommercial nature.
  - (d) Contract for services as a consultant.
  - (e) Contracts for educational and human custodial care services.
- (2) The following are not personal service contracts:
- (a) Contracts, even though in a professional capacity, if predominately for a product, e.g., a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all shrubs and trees is predominately for a tangible product.
  - (b) A contract to supply labor which is of a type that can generally be done by any competent worker, e.g., janitorial, security guard, laundry, and landscape maintenance service contract.
  - (c) Contracts for trade-related activities considered to be labor and material contracts.
  - (d) Contracts for services of a trade-related activity, even though a specific license is required to engage in the activity. Examples are repair and/or maintenance of all types of equipment or structures.
- c. Public contracts for the purchase of goods and services if the public contracting officer has determined that the awarding of the contract without formal competitive bidding will result in cost savings.
- ~~\$25,000~~
- (1) When the amount of the contract does not exceed ~~\$10,000~~ the contract may be awarded without competitive bidding. ~~\$25,000~~ ~~\$250,000~~
  - (2) When the amount of the contract is more than ~~\$10,000~~ but less than ~~\$150,000~~, the public contracting officer must obtain a minimum of three competitive quotes. The public contracting officer shall keep a written record of the source and amount of the quotes received. 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. Public improvement contracts, if the public contracting officer has determined that the awarding of the contract without competitive bidding will result in cost savings:
- ~~\$25,000~~
- (1) When the amount of the contract does not exceed ~~\$10,000~~ the contract may be awarded without competitive bidding. ~~\$25,000~~
  - (2) When the amount of the contract is more than ~~\$10,000~~ but less than \$100,000 the public contracting officer must obtain a minimum of three competitive quotes.
    - (a) The public contracting officer shall keep a written record of the source and amount of the quotes received. 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.
    - (b) The public contracting officer shall award the contract to the prospective contractor whose quote will best serve the interests of the contracting agency, taking into account price as well as any other applicable factors such as, but not

limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility. If an award is not made to the prospective contractor offering the lowest price quote, the contracting agency shall make a written record of the basis for award.

- e. Contracts for the purchase of goods or services if the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.
- f. Contracts for the purchase of copyrighted materials if there is only one supplier available for such goods.
- g. Contracts for the sale or purchase of advertising, including that intended for the purpose of giving public notice.
- h. Contracts for the purpose of investment of public funds or the borrowing of funds.
- i. When the price of goods and services had been established by a requirements contract pursuant to this section, the public contracting officer may purchase the goods and services from the supplier without subsequent competitive bidding.
  - (1) The public contracting officer or Board, as applicable, may enter into requirements contracts (also known as a blanket purchase order or price agreement) whereby it is agreed to purchase requirements or an anticipated need at a predetermined price providing the following conditions are complied with:
    - (a) The contract must be let by competitive bidding pursuant to the requirements of this policy.
    - (b) The term of the contract, including renewals, does not exceed three years.
    - (c) The contract is subject to no less than 30 days cancellation by the supplier or district.
- j. The public contracting officer may purchase goods or services available from only one source without competitive bidding:
  - (1) Upon a written determination:
    - (a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
    - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
    - (c) That the goods or services are for use in a pilot or an experimental project; or
    - (d) Other findings that support the conclusion that the goods or services are available from only one source.
  - (2) To the extent reasonably practical, the public contracting officer shall negotiate with the sole source to obtain contract terms advantageous to the district.
- k. Any contract amendment, including change orders, extra work, field orders, or other change in the original specifications which changes the original contract price or alters the work to be performed, may be made with the contract or subject to the following conditions:

- (1) The original contract was let by competitive bidding, unit prices or bid alternates were provided that established the cost for additional work, and a binding obligation exists on the parties covering the terms and conditions of the additional work; or
  - (2) The amount of the aggregate cost increase resulting from all amendments shall not exceed 10 percent of the initial contract, or 20 percent of the initial contract when the initial contract is for a face amount not exceeding \$100,000. Amendments made pursuant to section 12 (a) of this Article are not included in computing the aggregate amount.
- l. Contracts for the purchase of services, equipment or supplies for the maintenance, repair or conversion of existing equipment are exempt if required for the efficient utilization of the equipment. If practicable, competitive quotes shall be obtained.
  - m. Contracts for equipment repair or overhaul may be let without formal competitive bidding, subject to the following conditions:
    - (1) Service and/or parts required are unknown, and the cost cannot be determined without extensive preliminary dismantling or testing;
    - (2) Service and/or parts required are for sophisticated equipment for which specially trained personnel are required, and such personnel are available from only one source; or
    - (3) If the contract exceeds ~~\$10,000~~, the public contracting officer shall document in its procurement file the reasons why competitive bids or quotes were deemed to be impractical. ~~\$25,000~~
  - n. Personal property may be disposed of without competitive bidding under any of the following conditions:
    - (1) There are specific statutory procedures for the sale of the type of property involved, and the property is disposed of according to those procedures;
    - (2) The property has a current market value of less than \$10,000; or
    - (3) Except as provided in section (4) below, if the current market value of the property exceeds \$10,000, the property must be offered for competitive written bid and be advertised in accordance with ORS 279B.055, or be offered for sale at public auction. If no bids are received or if a determination is made that the market value of the property exceeds the offer of the highest responsible bidder, all bids may be rejected, and the public contracting officer may negotiate a sale directly; or
    - (4) If the current market value of the property exceeds \$10,000 and the Public Contracting Officer has made a recommendation to the Board, based on findings consistent with sound public contracting practices, and the Board approves such recommendation and adopts said findings, the superintendent or designee may negotiate the sale directly.
  - o. Cooperative procurements pursuant to ORS 279A.200 to ORS 279A.225.

## 5. Exemptions for Additional Contracts

- a. For contracts other than public improvement contracts, the Board or the public contracting officer may request that the Local Contract Review Board exempt particular goods and services or particular classes of goods and services from competitive bidding. The request

shall be in writing, and shall set forth the proposed contracting procedure, the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement under the standards set forth.

- b. The Board may approve the special procurement if it finds that the written request demonstrates that the use of a special procurement as described in the request, or an alternative procedure prescribed by the director or board, will:
  - (1) Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
  - (2) Either:
    - (a) Result in substantial cost savings to the contracting agency or to the public; or
    - (b) Otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable for competitive sealed bids under ORS 279B.055, competitive sealed proposals under ORS 279B.060, small procurements under ORS 279B.065 or intermediate procurements under 279B.070 or under any rules adopted thereunder.
- c. Notice of the contracting procedure proposed under section 5.a. and shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed, or published electronically instead of in a newspaper of general circulation if the Board determines that electronically providing public notice of bids or proposals is likely to be cost-effective.
- d. For public improvement contracts the Board may exempt contracts from competitive bidding as provided in ORS 279C.335.
- e. The Board may designate goods, services, or classes of goods or services as sole source procurements and authorize the award of contracts regarding such goods, services, or classes of goods or services without competition for any or all of the following reasons:
  - (1) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
  - (2) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
  - (3) That the goods or services are for use in a pilot or an experimental project;
  - (4) There is an emergency condition which makes solicitation of or procurement from additional sources impractical;
  - (5) There is only one source that meets the quality or specifications required of the goods or services;
  - (6) Sole source procurement will result in substantial cost savings to the district; or
  - (7) Other findings that support the conclusion that the goods or services are available from only one source.

## 6. **Emergency Contracts**

A contract may also be exempted from competitive bidding if the Board determines that emergency conditions require prompt execution of the contract. A determination of such an emergency shall be

entered into the record of the meeting at which the determination is made along with a description of the procurement method to be used in selecting a contractor.

**7. Brand Name Specification in Contracts**

- a. Specifications for contracts shall not require any product by any brand name or make, nor the product of any particular manufacturer or seller, unless the product is exempt from this requirement under the provisions of items 8., 9. and 10 below.
- b. If there is no other practical method of specification, public contracting agencies may designate a particular brand, make or product “or equal.”

**8. Emergency Specifications**

- a. The Board or the public contracting officer may specify the use of products of a particular brand or make in a contract when the Board has determined that emergency conditions exist pursuant to item 6. and the Board or the public contracting officer determines that such specifications are necessary to ensure prompt execution of the contract.
  - (1) The public contracting officer will prepare for Board review a single source qualification document outlining the emergency, cost of material, equipment, supplies and the vendor, and/or contractor purchased or contracted.

**9. Product Prequalification**

- a. The Board or the public contracting officer may, for purchases of goods and services, prepare a list of approved products by reference to particular manufacturers or sellers may be specified in accordance with the following product prequalification procedure:
  - (1) Reasonable efforts shall be made to notify all known manufacturers or vendors of competitive products of the intention to accept applications for inclusion in the list of prequalified products. Notice shall be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed. Notification shall include advertisement in a trade journal of statewide distribution when possible. The Board or the public contracting officer may authorize public notice of bids or proposals to be published electronically instead of in a newspaper of general circulation if the Board or the public contracting officer determines that electronically providing public notice of bids or proposals is likely to be cost-effective.
  - (2) Applications for prequalification of similar products are permitted up to 15 days prior to advertisement for bids on the product.
  - (3) The merits of an application for inclusion shall be determined through tests and/or examinations. The Board or the public contracting officer may make the test or examination results public in such a manner that protects the identity of the potential contractor, seller or supplier that offered the goods for testing or examination, including by using only numerical designations, and may keep confidential trade secrets, test data and similar information provided by a potential contractor, seller or supplier if so requested in writing by the potential contractor, seller or supplier.

- (4) If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, the applicant shall be notified in writing. The applicant may, within three days after receipt of the notice, appeal the denial or revocation to the Board.

## 10. Request for Proposal

The Board or public contracting officer may, at their discretion, use request-for-proposal competitive procurement methods subject to the following conditions:

- a. Contractual requirements are stated clearly in the solicitation document.
- b. Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document.
- c. Criteria used to identify the proposal that best meets the public contracting needs may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential.
- d. Solicitation clearly states all complaint processes and remedies available.
- e. Solicitation document states the provisions made for vendors to comment on any specifications, which they feel, limit competition.

## 11. Bidder Disqualification

- a. The public contracting officer may disqualify any person as a bidder on a contract if:
  - (1) The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability. If no performance bond is required, the public contracting officer may require such information, as he deems necessary to determine the bidder's financial ability;
  - (2) The person does not have equipment available to perform the contract;
  - (3) The person does not have personnel or sufficient experience to perform the contract; or
  - (4) The person has repeatedly breached contractual obligations to public and private contracting agencies.
- b. If the public contracting officer does not qualify the bidder, he shall notify the bidder in writing and state therein the reasons for disqualification.
- c. A bidder may appeal a notice of disqualification to the Board. The appeal must be filed with the public contracting officer in writing. The person appealing disqualification under subsections(1) through(4) above must notify the public contracting officer within three days after receipt of the notice referred to above of the person's intent to appeal. The notice of intent to appeal need not be in any particular form so long as it is in writing addressed to the public contracting officer and received within three business days after the contractor or bidder has received notice of Board disqualification.
- d. Upon receipt of the notice of appeal, the public contracting officer shall forward to the Board the notice of disqualification and the record of investigation by the public contracting officer upon which the public contracting officer based its disqualification, together with the notice of appeal. The burden of sustaining the disqualification is upon the public contracting officer. For purpose of appeals, three members of the Board shall constitute a quorum. Meetings for



appeal purposed may be held on five days' notice to members. At any time prior to the meeting of the Board, a public contracting agency may reconsider its revocation or disqualification.

## 12. **Bid Rejection**

The public contracting officer or Board may reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject all bids if it is in the public interest. The public contracting officer or Board may withdraw any solicitation for good cause when it is in the public interest to do so. The reasons for cancellation shall be kept as a public record.

## 13. **Retainage on Public Contracts**

- a. The approved securities which shall be acceptable in lieu of retainage fees are as follows:
  - (1) Bills, certificates, notes or bonds of the United States;
  - (2) Other obligations of the United States or its agencies;
  - (3) Obligations of any corporation wholly owned by the federal government;
  - (4) Indebtedness of the Federal National Mortgage Association;
  - (5) General obligation bonds of the state of Oregon or any political subdivision thereof;
  - (6) Time certificates of deposit or savings account passbooks issued by a commercial bank, savings and loan association or mutual savings bank duly authorized to do business in Oregon;
  - (7) Corporate bonds rated "A" or better by a recognized rating service.
- b. Deposits in lieu of retainage fees on public contracts shall be allowed as follows:
  - (1) If a contractor elects to deposit securities with a bank or trust company in lieu of retainage on public contracts, the securities shall be held by the custodian in fully transferable form and under the control of the public contracting officer.
  - (2) Nonnegotiable securities so deposited shall have proper instruments attached to enable the public contracting officer to effect transfer of title should the contractor be unable to fulfill the contract obligations.
  - (3) The custodian bank or trust company shall issue a safekeeping receipt for the securities to the public contracting officer. The receipt shall describe the securities, the par value, the name of the contractor and project number or other proper identification.
  - (4) Unless otherwise mutually agreed, the value placed upon said securities shall be market value.
  - (5) Securities deposited in the manner described above shall be released by the bank or trust company only upon the written instructions and authorization of the public contracting officer.
  - (6) in lieu of the above, an escrow agreement mutually acceptable to the contractor and the public contracting officer and the bank or trust company may be used.

#### 14. **Award of Contracts**

The Board or public contracting officer shall award contracts to the lowest bidder except in any of the following circumstances:

- a. The bidder has failed to substantially comply with either the specifications or any statutory requirements relating to the public contracting.
- b. The bidder is disqualified by the Board or public contracting officer pursuant to item 12. of this board policy.
- c. All Bids are rejected to further the public interest.

#### 15. **Protests and Review**

- a. An affected person may protest the approval of a special procurement. Before seeking judicial review of the approval of a special procurement, an affected person must file a written protest with the Board and exhaust all administrative remedies.
  - (1) The protest must be delivered to the Board within seven days after the first date of public notice of the approval of a special procurement, unless a different protest period is provided in the public notice of the approval of a special procurement.
  - (2) The written protest must include:
    - (a) A detailed statement of the legal and factual grounds for the protest;
    - (b) A description of the resulting harm to the affected person, and
    - (c) The relief requested.
  - (3) The Contract Review Authority shall not consider an affected person's protest of the approval of a special procurement submitted after the timeline established for submitting such protests under this rule. The Contract Review Authority shall issue a written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the special procurement, or revoke the approval of the special procurement.
- b. Protests of determinations by the Board that goods and services or classes of goods and services are sole-source procurements under item 5.e. of these rules shall be made to the Board within 30 days of the date of the board's determination. The protest must be in writing and must include a detailed statement of the factual and legal grounds of the protest, a description of the resulting harm to the petitioner, and a statement of relief requested. The Board shall issue a written disposition of the protest in a timely manner and make all appropriate dispositions as necessary.
- c. Protests of multi-Tiered and multistep solicitations (as defined in the Oregon Public Contracting Code) shall be made in the following manner:
  - (1) An affected offeror may protest exclusion from the competitive range or from subsequent tiers or steps of a solicitation in accordance with this rule, except where modified by the applicable solicitation document. An affected offeror must file a written

- protest with the Board and exhaust all administrative remedies before seeking judicial review.
- (2) An affected offeror may protest the offeror's exclusion from a tier or step of competition only if:
    - (a) The offeror is responsible and submitted a responsive offer; and
    - (b) But for a mistake by the district in evaluating the offeror's or other offerors' offers, the protesting offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting offeror must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring offerors are removed from consideration, and that those ineligible offerors are ineligible for inclusion in the competitive range because: their proposals were not responsive, or the district committed a substantial violation of a provision in the solicitation document or of an applicable procurement statute or administrative rule, and the protesting offeror was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.)
  - (3) Unless otherwise specified in the solicitation document, an affected offeror must deliver a written protest to the Board within seven days after issuance of the notice of the competitive range or notice of subsequent tiers or steps.
  - (4) The affected offeror's protest shall be in writing and must specify the grounds upon which the protest is based.
  - (5) The Contract Review Authority shall not consider an affected offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the solicitation document.
  - (6) The Contract Review Authority shall issue a written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, the Contract Review Authority may in its sole discretion either issue an addendum reflecting its disposition or cancel the procurement or solicitation.
- d. A prospective offeror may protest the procurement process or the solicitation document for a contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). Unless otherwise specified in the solicitation document, a prospective offeror must deliver a written protest to the Board not less than 10 days prior to closing.
- (1) In addition to the information required by ORS 279B.405(4), a prospective offeror's written protest shall include a statement of the desired changes to the procurement process or the solicitation documents that the prospective offeror believes will remedy the conditions upon which the protesting person offered the protest.
  - (2) No protest shall be considered unless it has been timely filed and meets the conditions set forth in ORS 279B.405(4). The Contract Review Authority shall issue a written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contract Review Authority upholds the protest, in whole or in part, the Contract Review Authority may in its sole discretion either issue an addendum reflecting its disposition or cancel the procurement or solicitation.

- (3) If the Board receives a protest from a prospective offeror in accordance with this rule the Contract Review Authority may extend the date of closing if the Board or designee determines an extension is necessary to consider and respond to the protest.
  - (4) Prior to the deadline for submitting a protest a prospective offeror may request that the Board clarify any provision of the solicitation document. Any clarification issued by the Contract Review Authority to an offeror, whether orally or in writing, does not change the solicitation document and is not binding on the district unless the district amends the solicitation document by addendum. Unless otherwise provided in the solicitation documents the submission of a request for clarification shall not affect the deadline for submitting a protest under this rule.
- e. Protests pursuant to ORS 279B.410 shall be in writing and must be filed with the Board within seven days after the award of a contract, or issuance of the notice of intent to award the contract, whichever occurs first.
  - (1) The written protest shall specify the grounds of the protest to be considered by the Board.
  - (2) The Contract Review Authority shall issue a written disposition of the protest in a timely manner. If the Contract Review Board upholds the protest, in whole or in part, the Contract Review Authority may in its sole discretion either award the contract to the successful protestor or cancel the procurement or solicitation.
- f. An affected person may protest a decision to exclude a product from a qualified products list in accordance with the procedure provided in item 9. An affected person must file a written protest and exhaust all administrative remedies before seeking judicial review of the qualified products list decision.
- g. An affected person may protest a solicitation for a public improvement contract by filing a written protest with the Board not less than 10 days prior to closing.
  - (1) The written protest must be marked “Contract Provision Protest” and must reference the solicitation document number or other identification as specified in the solicitation document.
  - (2) The written protest shall include a detailed statement of the legal and factual grounds for the protest; a description of the resulting prejudice to the protesting person; and a statement of the desired changes to the contract terms and conditions, including any specifications.
  - (3) The Contract Review Authority shall provide notice to the applicable person if it entirely rejects a protest. If the Contract Review Authority agrees with the person’s request or protest, in whole or in part, the Contract Review Authority shall either issue an addendum reflecting the determination or cancel the solicitation.
- h. An adversely affected person may protest an award by the district of a Public Improvement Contract. The protest must be made within seven days of the date that the district sends by first class mail or otherwise issues a written Notice of Intent to Award to the adversely affected person, or within such other protest period as is provided under the solicitation document. If no other protest period is provided under the solicitation document and Notice of Intent to Award is issued to the adversely affected person the protest must be made within 14 days of the date of the contract award. An adversely affected person must exhaust all avenues of

administrative review and relief before seeking judicial review of the district's contractor selection or contract award decision.

- (1) A person is adversely affected under this section only if the person is eligible for award of the contract as the responsible bidder submitting the lowest responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for award, i.e., the protesting person must claim that all lower bidders or higher-scored proposers are ineligible for award because:
    - (a) Their offers were nonresponsive; or
    - (b) The district committed a substantial violation of a provision in the solicitation document or of an applicable procurement statute or administrative rule, and the protesting person was unfairly evaluated and would have, but for such substantial violation, been the responsible bidder offering the lowest bid or the responsible proposer offering the highest-ranked proposal.
  - (2) A protest must be in writing and must specify the grounds upon which the protest is based.
  - (3) The Contract Review Authority shall issue a written disposition of the protest in a timely manner.
- i. An adversely affected person may submit to the district a written protest of the district's decision to exclude the person from the competitive range pursuant to ORS 279C.410. Such protest must be made within seven days after issuance of the notice of the competitive range, unless a different protest period is provided under the solicitation document. An adversely affected person must exhaust all avenues of administrative review and relief before seeking judicial review of the decision to exclude the person from the competitive range.
- (1) A person is adversely affected under this section only if the person is responsible and submitted a Responsive Proposal and is eligible for inclusion in the competitive range, i.e., the protesting proposer must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring proposers are removed from consideration, and that those ineligible proposers are ineligible for inclusion in the competitive range because:
    - (a) Their proposals were not responsive; or
    - (b) The district committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting proposer was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.
  - (2) The protest must be in writing and must specify the grounds upon which the protest is based.
  - (3) The Contract Review Authority shall issue a written disposition of the protest in a timely manner.

## 16. Analysis in Procurements

For procurements estimated to cost in excess of \$250,000 that are not for public improvements, the district shall, when required, comply with ORS 279B.030 to ORS 279B.036.

### **Findings of Fact for Adopting of Board Policy DJA**

The Board of the district, acting as the Local Contract Review Board pursuant to 279A.050 and ORSA 279A.060, makes the following findings of fact in support of the class special procurements adopted in Sections f., g., i., l. and m. of item 4. of Board policy DJA - District Procurement regarding public contracting.

Generally, ORS 279B.085 empowers the Board acting as the Local Contract Review Board, to adopt rules exempting certain classes of contracts and class special procurements from competitive procurement upon approval of the following findings:

- a. It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- b. The awarding of public contracts pursuant to the exemption is reasonably expected to result in substantial cost savings to the district or otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (Competitive sealed bidding), 279B.060 (Competitive sealed proposals), 279B.065 (Small procurements) or 279B.070 (Intermediate procurements) or under any rules adopted thereunder.

Heading numbers found in this exhibit refer to the section number of item 4. of district Policy DJA Specific Findings – Class Special Procurements.

#### Item 4. a. – Copyrighted Material

Copyrighted materials are, by definition, ultimately available from only one source. The district typically purchases the bulk of its textbooks and other copyrighted material through various collective purchasing achieving substantial savings in both purchase and freight costs.

Accordingly the district finds that this exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts and the awarding of public contracts pursuant to this exemption is expected to result in substantial cost savings to the district.

#### Item 4. f. – Advertising

Advertising media are generally, by their nature, unique and each variety of media and particular medium for advertising reaches a specific audience. There is limited competition for the sale of advertising space in daily newspapers of general, trade or business circulation in the vicinity of the district. Where the sources are unique, cost savings or differences are difficult and potentially expensive to quantify. Depending on the nature of the advertisement to be placed, different media

will be appropriate in different circumstances. Often advertising will need to be purchased on a time frame that would not allow competitive bidding.

The sale of advertising is not a procedure that lends itself to competitive bidding for the districts purposes. Such sales are generally accomplished for student activities and solicited by students – for example the sale of advertising in school newspapers and yearbooks. These publications have extremely limited circulation and many of the business participants do so in the spirit of good will. The district would not experience any enhanced revenue by seeking competitive bids or proposals for such advertising and, in fact, would probably incur additional administrative costs associated with the competitive process at the same time as depriving students of the education experience of engaging with local businesses in soliciting advertisements. This reasoning holds true for other student activities, such as athletics, drama or music events, and the like.

Accordingly, the district finds that this exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts and the awarding of public contracts pursuant to this exemption is reasonably expected to lead to substantial cost savings to the district as well as otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055 (Competitive sealed bidding), 279B.060 (Competitive sealed proposals), 279B.065 (Small procurements) or 279B.070 (Intermediate procurements) or under any rules adopted thereunder.

#### Item 4. i. – Purchases under Existing Requirements Contract

Requirements contracts are initially awarded on a competitive basis. They are entered into precisely because they allow a competitive process to establish the cost for a longer term series of purchases, thus relieving the district of the expense of engaging in the process each time it makes a purchase. Because these contracts are initially awarded competitively, they are unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts and the awarding of public contracts pursuant to the exemption is reasonably expected to lead to substantial cost savings to the district.

#### Item 4. l. – Services, Equipment, or Supplies for the Maintenance, Repair, or Conversion of Existing Equipment

Services, equipment and supplies for maintenance, repair or conversion of existing equipment are frequently specific to the particular brand or type of equipment involved. Often the need for these goods or services cannot be reasonably anticipated. The number of vendors or suppliers in the area able to supply these things is limited. Delay is frequently costly. Sophisticated equipment may require particular parts or supplies available from only one source. Often, a piece of equipment will have a warranty in place which covers some, but not necessarily all of the necessary parts or supplies – however such warranties frequently restrict the sources from which the necessary items may be acquired.

Accordingly, the district finds that contracts entered into under this exemption are unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts and the awarding of public contracts pursuant to the exemption is reasonably expected to lead to substantial cost savings to the district.

#### Item 4. m. – Equipment Repair or Overhaul

The need for equipment repair or overhaul cannot be anticipated by district staff. If a piece of equipment is not working properly, the district incurs the costs of downtime, potential rental fees for replacement equipment, as well as staff time and other inconveniences or liabilities to its programs. The number of vendors in the area who are able to perform repair or overhaul on a particular piece of equipment is limited due to the specialized knowledge generally involved. Sophisticated equipment may require specially trained personnel available from only one source. Often, a piece of equipment will have a warranty in place which covers a part, but not all of the repairs – however such warranties frequently restrict the parties that may perform the work.

Accordingly, the district finds that contracts entered into under this exemption are unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts and the awarding of public contracts pursuant to the exemption is reasonably expected to lead to substantial cost savings to the district.

END OF POLICY

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#### Legal Reference(s):

[ORS 244.040](#)

[ORS Chapters 279, 279A, 279B, 279C](#)

[ORS 294.311](#)

[ORS 328.441 - 328.470](#)

[ORS 332.075](#)

[OAR 125-025-0040](#)

#### Cross Reference(s):

DJ - District Purchasing

DJB - Petty Cash Accounts

DJG - Vendor Relations

DK - Payment Procedures

EH - Electronic Data Management