

Three Rivers School District

8550 New Hope Rd • PO Box 160 • Murphy, OR 97533

Policy: DJC
Adopted: 4/11/05

PUBLIC CONTRACTING

- I. **The Board will serve as the Local Contract Review Board (LCRB) for the Three Rivers School District (TRSD).** District purchasing shall be conducted in accordance with the Board's adopted rules.
- II. **ORS 279A, 279B, and 279C, and the Oregon Attorney General's Public Model Contracting Rules ("Model Rules")**
 - A. The TRSD, except as otherwise described below, adopts the provisions of ORS 279A, 279B, and 279C and the "Model Rules" as the Contracting Rules for the District, as such Model Rules now exist or are later modified.
 - B. Nothing in the procedures described below apply to "public improvements," which are defined as "projects for construction or major renovation work on real property by or for a public agency." It does not include emergency work, minor alteration, or ordinary repair or maintenance necessary to preserve a public improvement.
- III. **Delegation.**
 - A. The LCRB delegates the authority for District contracting to the Superintendent and the Business Manager of the District. The approval of both individuals is required for any contract greater than \$5,000. Either may approve contracts of \$5,000 or less.
 - B. The LCRB also delegates to the Superintendent and the Business Manager the authority to make procurements of goods or services in an emergency.
 1. An emergency is defined as "circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services, or threat to the public health safety that requires prompt execution of a contract to remedy the condition."
- IV. **Contracts that are exempt from competitive bidding.**
 - A. Contracts for the purchase and sale of real estate.
 - B. Personal Service Contracts.
 - C. Contracts made with other contracting agencies or the federal government
 - D. Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.
 - E. Service contracts for health insurance entered into by the State Department of Health and Human Services.
 - F. Grants
 - G. Contracts for professional or expert witnesses in litigation.
 - H. Sole-source expenditures when rates are set by law or ordinance for purposes of source selection.
 - I. Procurements from an Oregon Corrections Enterprises program.
 - J. Energy saving performance contracts
 - K. Contracts entered into pursuant to the incurring of debt or investment of funds by the public body.
 - L. Contracts for employee benefit plans.
 - M. Emergency contracts.

- N. Contracts exempted by the Local Contract Review Board (LCRB) following approval of findings that such exemption will result in cost savings, and it is unlikely that the exemption will encourage favoritism or substantially diminish competition.
- O. Any contract for goods or services if the total value is \$5000 or less; however, when time and circumstances permit, and when substantial savings may result, the District will put these contracts out to bid. (See V, “Informal Bidding,” below.)
- P. Insurance and service contracts as provided by law.
- Q. Contracts in effect at the time this policy is adopted.

V. Informal Bidding

- A. “Small procurements” are defined as “any procurement of goods or services not exceeding \$5,000.”
 - 1. The TRSD may award such procurements in any manner it finds “practical and convenient,” including direct selection.
 - 2. Such a contract may be modified up to 100 percent of its original value, also without competitive bidding. Thus a contract originally issued for \$4,000 could be amended, in one or multiple amendments, to a total of \$8,000 before it would have to be competitively bid. However, in no case will a procurement be deliberately “parsed” into multiple contracts of less than \$5,000 in order to circumvent this procedure.
- B. “Intermediate procurements” are defined as “any procurement of goods or services” exceeding \$5,000 but not exceeding \$100,000.”
 - 1. For such a procurement, TRSD will obtain at least three informally solicited quotes from prospective contractors.
 - 2. The contract will be awarded to the offeror whose quote or proposal will “best serve the interests of the contracting agency, taking into account price as well as other considerations.
 - 3. If all quotes are higher than the statutory limitation of \$100,000, the TRSD may modify or negotiate the contract price to a maximum of \$200,000, before entering into a formal bidding process.

VI. Exemptions

- A. For procurements in excess of \$100,000, formal bidding processes (advertisement, ITB or RFP, other competitive process must be followed, unless an exemption is taken, as described below.
 - 1. The LCRB may adopt findings which support an exemption (or “special procurement” in the new language) when the award of such contract is:
 - (a) Unlikely to encourage favoritism in the awarding of public contracts;
 - (b) Unlikely substantially diminish competition for public contracts, and will result in substantial cost savings to the agency or the public;
 - 2. There are two types of “special procurements”
 - (i) A “class special procurement,” which includes an entire class of contracts;
 - (ii) A “contract-specific special procurement,” which includes only one contract.
 - 2. To use this process, a written request must be made to the LCRB, which then must make a finding; or, alternatively, the LCRB may find that the special procurement will “otherwise substantially promote the public interest in a manner that could not be practically realized by complying with public contract requirements.”
 - 3. Once the LCRB authorizes the special procurement, the contract may be awarded to the offer or “whose offer the LCRB determines in writing to be the most advantageous to the District.” If the approval is for a class special procurement, contracts within that class may be awarded, in perpetuity, without further approvals or bidding.

VII. Name Brands and Sole-Source Suppliers

- A. The LCRB, or a person designated in writing by the LCRB, may determine in writing that the goods or services, or class of goods or services, are available from only one source.
- B. The determination of sole source must be based on written findings that should state:
 - 1. That the efficient use of existing goods or services 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 good or services are for use in a pilot or experimental project; or
 - 4. Other findings that support the conclusion that the goods or services are available from only one source.

VIII. Personal Service Contracts

- A. Pursuant to ORS 279A.055, TRSD defines “Personal Services” as follows:
 - 1. “Personal services” shall include those that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider.
 - 2. Professionals providing such services are architects, engineers; surveyors; attorneys; accountants; auditors; computer programmers; artists; designers; performers; and consultants.
 - 3. In addition, and under the new law, personal service contracts are expanded to include janitorial, food service, and maintenance contracts.
 - 4. It is to be emphasized than any and all of these “personal services” can be put out to bid, and when it is in the District’s and its taxpayer’s best interest, they will be.
 - 5. While the TRSD is not required to use Qualification-Based Selection (QBS) procedures when selecting architects, engineers, attorneys, auditors, and land surveyors, it normally will do so. This procedure requires that the District solicit proposals from such professionals only on the basis of qualifications for the job, and may negotiate price only after it has made its qualification-based selection. If the TRSD and the selected contractor cannot agree on a price, the TRSD is free to terminate the negotiations and move on to the next qualified candidate.
 - 6. In the TRSD, the Superintendent and the Business Manager have the authority to determine whether a particular service is a “personal service” under these definitions.
- IX. As required by ORS 279.049 (5)(b), the district shall review its rules each time the Attorney General adopts a modification of the model rules, to determine whether any modifications need to be made to district rules to ensure compliance with statutory changes. Modifications will be made only following review by the district’s legal counsel. New rules, as necessary, will be adopted by the Board. In the event it is unnecessary to adopt new rules, Board minutes will reflect that the review process was completed as required. The Board recognizes that a public contracting agency that has not established its own rules of procedure as required by ORS
- x. 79.049 (5) is subject to the model rules adopted by the Attorney General, including all modifications to the model rules that the Attorney General may adopt.
 - y. Public contracts, when awarded, will be awarded to the lowest, responsive and responsible bidder or the best, responsive and responsible proposer, consistent with solicitation document provisions. The Board may reject in whole, or in part, any bid or proposal not in compliance with all prescribed procedures and requirements and may reject for good cause any bid or proposal upon a written finding that it is in the public interest to do so. Such findings shall conform with criteria as specified by the *Oregon Attorney General’s Model Contract Rules Manual*.

- z. Opportunities will be provided to all responsible suppliers to do business with the district.
- aa. Special efforts will be made by the district to encourage businesses in the greater Rogue Valley community to submit quotes and bids on materials, equipment, supplies and services as appropriate. The Director of Fiscal and Support Services will develop and maintain lists of potential vendors for various types of materials, equipment, supplies and services. Such lists may be used to develop a mailing list for distribution of specifications and solicitations for bids or proposals. Any supplier may be included in the list upon written request.
- bb. Records of bids, proposals and specifications will be kept in the district administration office and will conform with Oregon Revised Statutes and applicable provisions of the *Oregon Attorney General's Model Contract Rules Manual*.

END OF POLICY

Legal Reference(s):

ORS Chapter 279

OAR 125-030-0000 to -0100
OAR 125-300-0000 to -0100
OAR 125-310-0005 to -0500
OAR 125-320-0010 to -0025
OAR 125-330-0030 to -0700
OAR 125-360-0010 to -0030
OAR 137-030-0000 to -0155
OAR 137-035-0000 to -0080
OAR 137-040-0000 to -0590

Oregon Attorney General's Model Public Contract Rules Manual, Department of Justice (2002).

Cross Reference(s):