



# Agenda

North Clackamas School Board  
Thursday, May 23, 2024 - 5:45 PM  
Board Room/YouTube  
12400 SE Freeman Way  
Milwaukie, OR 97222

**Times listed on the agenda below are only estimates and may be adjusted.**

## EXECUTIVE SESSION

Convened under Oregon Laws ORS 192.660 (2)(e)

NOTICE TO MEDIA: (4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2). Representatives of the news media who are permitted to attend executive sessions are specifically directed not to report on or otherwise disclose any of the deliberations or anything said about these subjects during the executive session, except to state the general subject of the session as previously announced.

**5:45 Real Estate Transaction**

**6:15 Adjourn Executive Session**

## OPEN SESSION

**6:30 Call to Order**

**Community Comments**

**Native Land Acknowledgement**

**3**

**Flag Salute**

**4**

**Minutes - May 9, 2024**

**5**

**Minutes - May 19, 2024**

**8**

**Consent Agenda**

**A. Employment Changes**

**B. Long-Range Facility Plan for Capital Improvements**

**9**

**C. (CARE) Community After-School Relationship Enrichment Program Fees**

**11**

**7:05 1. Lesbian, Gay, Bisexual, Transgender & Queer (LGBTQ+) Pride Month -  
Proclamation**

**14**

Presenter: Jena Benologa

<b>7:15</b>	<b>2. Sabin-Schellenberg Professional Technical Center - Presentation</b> Presenter: Ivonne Dibblee	<b>16</b>
<b>7:40</b>	<b>3. Science Adoption Grades K-12 - Discussion</b> Presenter: Tammy O'Neill	<b>55</b>
<b>8:10</b>	<b>4. Nutrition Services - Report</b> Presenter: Matt Makara	<b>75</b>
<b>8:25</b>	<b>5. Revised Public Contracting Rules - Discussion</b> Presenter: Matt Makara	<b>99</b>
<b>8:45</b>	<b>6. Contract Award: Yondr Phone Pouches Secondary Schools Grades 6-12 - Discussion</b> Presenter: Ivonne Dibblee	<b>287</b>
<b>9:00</b>	<b>7. Authorization to Purchase K-3 Decodable Books - Action</b> Presenter: Ivonne Dibblee	<b>318</b>
<b>9:05</b>	<b>8. Authorization to Purchase K-2 Classroom Library Books and Flexible Classroom Furniture - Action</b> Presenter: Ivonne Dibblee	<b>319</b>
<b>9:10</b>	<b>9. Superintendent's Contract - Action</b> Presenter: Jena Benologa	<b>320</b>
<b>9:15</b>	<b>Adjourn</b>	



## Native Land Acknowledgment

We acknowledge the land on which we sit and which we call the North Clackamas School District rests on the traditional and indigenous lands and village sites of the Native peoples of the Kalapuya, Chinook, Molalla, and the Clackamas. We take this opportunity to offer gratitude for the ability to learn, work, and be a community on this land, and we offer thanks to the original caretakers of this region. We recognize the historic policies of colonization, genocide, relocation, and assimilation that affected Indigenous and Native families both past and present and that will affect those in the future, and honor the resilience and revitalization of our Indigenous and Native communities. We pay our respects to the Elders, both past and present, who have been the stewards of this land throughout the generations.



## Flag Salute

I pledge allegiance to the Flag of the United States of  
America, and to the Republic for which it stands, one Nation  
under God, indivisible, with liberty and justice for all.

NORTH CLACKAMAS SCHOOL DISTRICT 12  
CLACKAMAS COUNTY, OREGON  
MINUTES — BOARD OF DIRECTORS MEETING  
May 9, 2024  
Board Room/YouTube

**Open Session**

With due notice having been given and a quorum present, Chair Jena Benologa convened open session at 6:30 p.m. with the following members present:

Jena Benologa	–	Chair
Kathy Wai	–	Vice Chair
Mitzi Bauer	–	Director
April Dobson	–	Director
Paul Kemp	–	Director
Tory McVay	–	Director (joined via conference phone)
Donna Collingwood	–	Board Secretary
Shay James	–	Superintendent

Also present were Tiffany Shireman, Ivonne Dibblee, Cindy Detchon, Patricia Ahrens, Matt Makara, Petra Callin, Khaliyah Williams-Rodriguez, Michelle Riddell, and Tammy O’Neill.

**Community Comments** -

- Michael Corbus (on behalf of Kylie Corbus), Oak Grove, spoke regarding school culture.
- Michael Corbus, Oak Grove, spoke regarding school culture.

Kathy Wai read the Native Land Acknowledgement. April Dobson led the Pledge of Allegiance.

R23/24-69     **Minutes** – Kathy Wai moved, Mitzi Bauer seconded the motion to approve the minutes of the regular Board Meeting held April 11, 2024.

Motion passed unanimously, 6-0.

R23/24-70     **Minutes** – Kathy Wai moved, Mitzi Bauer seconded the motion to approve the minutes of the Executive Board Meeting held April 30, 2024.

Motion passed unanimously, 6-0.

R23/24-71     **Consent Agenda** – April Dobson moved, Tory McVay seconded the motion to adopt the consent agenda as recommended:

**Employment Changes** - Approve employment changes as listed, with a copy of the list made as part of the official minutes, as recommended by the Executive Director of Human Resources:

- Administrator terminations
- Licensed appointments, leaves, and terminations

**2024-2025 Board Meeting Calendar** - Approve the 2024-2025 Board Meeting Calendar.

**2024-2025 Middle School and High School Fees/Student Chromebook Insurance Program** - Approve the 2024-2025 Middle School and High School Fee Schedule and Student Chromebook Insurance Program.

**Low-Income Housing Property Tax Abatement** - Approve the resolution authorizing tax exemption of certain non-profit low-income housing projects under ORS 307.540 to ORS 307-548 in the City of Milwaukie.

**Oregon School Employees Association Chapter #71, Collective Bargaining Agreement 2024-2027** - Approve the OSEA Collective Bargaining Agreement from July 1, 2024 to June 30, 2027. Association members ratified the tentative agreement on April 23, 2024.

**Travel Permission Request -**

- Grant permission for 3 students from Adrienne C. Nelson High School to travel to Des Moines, IA, June 15-22, 2024.

**Travel Permission Request -**

- Grant permission for 4 students from Clackamas High School to travel to Des Moines, IA, June 15-22, 2024.

**Travel Permission Request -**

- Grant permission for 90 students from Clackamas High School to travel to McMinnville, OR, June 15-18, 2024.

**Travel Permission Request -**

- Grant permission for 8 students from Sabin-Schellenberg Professional Technical Center to travel to Atlanta, GA, June 23-29, 2024.

Motion passed unanimously, 6-0.

**North Clackamas Education Association (NCEA) Featured Educator** – NCEA Representative Melinda Ryan, recognized Dual Language Immersion teacher at Alder Creek Middle and Rowe Middle School Jen Martin as NCEA Featured Educator of May.

**Oregon Trail Elementary School - Presentation**- Executive Director of Elementary Programs Patricia Ahrens, Principal of Oregon Trail Elementary Kari Montgomery, Vice President Oregon Trail PTO Courtney Burling, Instructional Coach Stacy Coogan, and Oregon Trail Elementary teacher Gretchen Rowland-Horrigan gave a presentation on Oregon Trail Elementary School. The presentation included tier 1 universal instruction, responding to student needs, student voices, and community engagement. Questions and comments from the Board were addressed.

**Board Reports** – Board members made brief reports on activities and events they had attended.

**Quarterly Financial Report** – Executive Director of Finance and Business Services Matt Makara discussed the quarterly financial report.

**Education Equity Advisory Committee - Report**- Senior Director of Equity, Engagement, and Enrollment Khaliyah Williams-Rodriguez, New Teacher Retention and Success Mentor Artigas Bonifacio, community member Blanca Johnson and a NCSd middle school student presented an informational update to the Board on the Educational Equity Advisory Committee. Questions and comments from the Board were addressed.

**(CARE) Community After-School Relationship Enrichment Program Update & Fees - Discussion** – Assistant Superintendent of Operations Cindy Detchon and Director of Community Services Natalie Whisler presented an update on the Community After-School Relationship Enrichment (CARE) program and consideration of an increase in fees. Questions and comments from the Board were addressed.

**Long-Range Facility Plan for Capital Improvements - Discussion** - Assistant Superintendent of Operations Cindy Detchon discussed the Long-Range Facility Plan for capital improvements. Questions and comments from the Board were addressed.

R23/24-72

**Math Adoption Grades K-12 - Action** - Mitzi Bauer moved, April Dobson seconded the motion to adopt math curriculum for grades K-12.

Motion passed unanimously, 6-0.

There being no further business to come before the Board, the meeting adjourned at 9:11 p.m.

**Unapproved**

**NORTH CLACKAMAS SCHOOL DISTRICT 12  
CLACKAMAS COUNTY, OREGON  
MINUTES — BOARD OF DIRECTORS MEETING EXECUTIVE SESSION  
May 19, 2024  
Zoom**

**Executive Session** With due notice having been given and a quorum present, Chair Jena Benologa convened executive session under ORS 192.660(2)(e), at 12:03 p.m. with the following members present:

Jena Benologa	—	Chair
Kathy Wai	—	Vice Chair
April Dobson	—	Director
Paul Kemp	—	Director
Tory McVay	—	Director
Glenn Wachter	—	Director
Donna Collingwood	—	Board Secretary
Shay James	—	Superintendent

Also present were Cindy Detchon, Ivonne Dibbelee, Matt Makara, Michelle Riddell, Ron Stewart, and Steve Naito.

Real Property Transaction - The Board consulted with persons designated to negotiate real property transactions.

There being no further business to come before the Board, the meeting adjourned at 12:43 p.m.

**Unapproved**

**SUPERINTENDENT’S RECOMMENDATION:**

Approve Long-Range Facility Plan for capital improvements.

**BACKGROUND:**

State Statute (ORS 195.110) requires large school districts in the State of Oregon to have a Facilities Plan document to help guide future planning efforts for facilities in school districts. Guidance from the State advises that Facility Plans should be reviewed and updated every seven to ten years. In 2016, the North Clackamas School District Board adopted a Long Range Facility Plan, which guided the capital projects identified in the 2016 Capital Bond program, which was approved by voters.

In the Spring of 2023, NCS D commissioned BRIC Architecture, Inc., to collaborate with a district committee to complete a new Long-Range Facility Plan. That plan was completed in April 2023. To complete the plan, an accessibility study of all district facilities was needed. The addendum was completed in March 2024.

The plan incorporates enrollment projections completed by FLO Analytics, coordination with local jurisdictions and planning departments, input from school staff on program needs, and community input as part of the district-adopted Strategic Plan.

Operations staff regularly coordinate with regional and local government entities on matters that may impact the District and its operations. These entities include, but are not limited to, Metro, Clackamas County, Water Environmental Services, North Clackamas Parks and Recreation District, the City of Milwaukie, and the City of Happy Valley.

Oregon Revised Statute 320.170 allows school districts to impose construction excise taxes through intergovernmental agreements with other local governments, by resolution adopted by the School Board. That tax may not be imposed unless the school district develops a long-term facilities plan for capital improvements.

**ATTACHMENTS:**

- A. [Long-Range Facility Plan](#)
- B. [Accessibility Study](#)
- C. Resolution

**PRESENTER / STAFF CONTACT:**

Cindy Detchon, Assistant Superintendent of Operations

**RESOLUTION No.**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE NORTH CLACKAMAS SCHOOL DISTRICT ADOPTING THE LONG-RANGE FACILITIES PLAN FOR MAKING CAPITAL IMPROVEMENTS.**

**WHEREAS**, the district hired BRIC Architecture, Inc. to collaboratively work with a district committee to develop a long-term Facilities Master Plan as outlined in ORS 195.110; and

**WHEREAS**, an updated accessibility study of all facilities was conducted; and

**WHEREAS**, ORS 320.170 allows school districts, by resolution adopted by the School Board, to impose construction excise taxes through intergovernmental agreements with other local government jurisdictions; and

**WHEREAS**, ORS 320.170 states that the construction tax may not be imposed unless the school district develops a long-term facilities plan for capital improvements.

**NOW, THEREFORE, BE IT RESOLVED** that the North Clackamas School Board adopts the April 2023 Long-Range Facility Plan.

Approved this \_\_\_rd day of May 2024.

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Board of Directors

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Dr. Shay James, Superintendent/Clerk

North Clackamas School District

**(CARE) COMMUNITY AFTER-SCHOOL RELATIONSHIP  
ENRICHMENT PROGRAM UPDATE & FEES**

**CONSENT C**  
May 23, 2024

**SUPERINTENDENT'S RECOMMENDATION:**

Approve fee increases as per Attachment A.

**REASON FOR BOARD CONSIDERATION:**

Community After-School Relationship Enrichment (CARE) update and consideration of an increase in fees.

**BACKGROUND:**

The CARE program provides out-of-school-time fee-based care and enrichment activities for North Clackamas School District students in grades K-5.

Since 2021, the CARE program has expanded rapidly due to high demand and the lack of available community providers. In 2022-2023, the CARE program added a new site with 90 additional student seats. In 2023-2024, the CARE program added classroom groups at two sites, adding 40 additional student seats. In the fall of 2024, CARE will add an eighth program location at Verne Duncan Elementary.

- Increase program fee rates by approximately 9% percent
- No changes to registration or incidental fees
- All changes take effect September 1, 2024

**Rate Increase:** Rate increases for the CARE program were last approved on May 12, 2022. This year, the program anticipates breaking even on costs. Next year, the program anticipates a staffing cost increase of about ten percent. It is recommended that CARE fees be increased by approximately 9% as shown in Attachment A.

**ATTACHMENTS:**

- A. Proposed CARE Fee Schedule
- B. Fee Structure Market Comparison

**PRESENTER / STAFF CONTACT:**

Cindy Detchon, Assistant Superintendent of Operations

**NORTH CLACKAMAS SCHOOL DISTRICT  
CARE PROGRAM  
FEES EFFECTIVE FOR THE 2024-2025 SCHOOL YEAR**

**REGISTRATION FEES**

Family (annual registration)	\$70
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**MONTHLY FEES**

After School	<del>\$330</del> <b>\$360</b>
Before School	<del>\$235</del> <b>\$255</b>
Before and After School	<del>\$470</del> <b>\$510</b>

**DAILY FEES**

After School	<del>\$28</del> <b>\$30</b>
Before School	<del>\$21</del> <b>\$23</b>
Before and After School	<del>\$36</del> <b>\$39</b>
Non-School Days	<del>\$45</del> <b>\$50</b>

**SUMMER FEES**

Weekly	<del>\$200</del> <b>\$220</b>
Daily	<del>\$50</del> <b>\$50</b>
Extended Hours- Weekly	<del>\$40</del> <b>\$44</b>
Extended Hours- Daily	<del>\$10</del> <b>\$11</b>

**DISCOUNTS**

Family Discount: 10% off total charges for family of 2 or more children

**ADDITIONAL FEES**

No Show Fee	\$5
Past Due Fee	\$15
Late Pick-Up Fee	\$1/minute
Return Check Fee	\$25
Summer Program Tshirt Fee	\$15

## NORTH CLACKAMAS SCHOOL DISTRICT CARE PROGRAM

### Fee Structure Market Comparison

	NCS D CARE Proposed Fees	Oak Grove Day Care	Kindercare- Sunnyside	Learning Tree Oak Grove	Oregon City School District	Goddard Happy Valley	Happy Valley Child's Kingdom
<b>Monthly Fees</b>							
After School	360	490	Discontinued	510	330.00	957	457
Before School	255	275	N/A	340	N/A	N/A	457
Before and After School	510	575	N/A	590	N/A	N/A	588
<b>Daily Fees</b>							
After School	30	40	N/A	60	N/A	N/A	N/A
Before School	23	25	N/A	32	N/A	N/A	N/A
Before and After School	39	50	N/A	60	N/A	N/A	N/A
Non-School Days	50	50		37 if reg mo			35 if reg mo
<b>Summer Fees</b>							
Monthly	N/A	1190		*1050	N/A	(K-1 only) 1775	1277
Weekly	220	300	N/A	N/A	350	N/A	N/A
Daily	50	85	N/A	N/A	N/A	N/A	N/A
<b>Registration</b>	70	50		40	85	325	200
*Monthly fees based on 4 week period; NSD rates are in addition to monthly program							

**LESBIAN, GAY, BISEXUAL, TRANSGENDER, and  
QUEER (LGBTQ+) PRIDE MONTH**

**PROCLAMATION**  
Agenda Item #1  
May 23, 2024

**SUPERINTENDENT’S RECOMMENDATION:**

Adopt the proclamation recognizing June as Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ+) Pride Month in North Clackamas School District.

**BACKGROUND:**

Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ+) Pride Month is celebrated annually in June to honor the 1969 Stonewall riots. LGBTQ+ Pride Month strives to achieve equal justice and equal opportunity for lesbian, gay, bisexual, transgender, and queer Americans. In June of 1969, patrons and supporters of the Stonewall Inn in New York City staged an uprising to resist the police harassment and persecution to which LGBTQ+ Americans were commonly subjected. This uprising marks the beginning of a movement to outlaw discriminatory laws and practices against LGBTQ+ Americans.

In recent years, a national study found that 40 percent of transgender adults reported having made a suicide attempt, with 92 percent of these individuals reported having attempted suicide before the age of 25. Having a gender sexuality alliance reduces a child’s risk of attempting suicide by 50 percent and students at schools with gender sexuality alliances experience less bullying.

In NCSD, we recognize LGBTQ+ community as more expansive, and as such have noted the (+) in recognition of all in the community.

**ATTACHMENTS:**

Proclamation Lesbian, Gay, Bisexual, Transgender, and Queer (+) Pride Month

Resource: <https://www.oregonsuicideprevention.org/community/lgbtq/>

**PRESENTER:**

Jena Benologa, Board Chair



# Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ+) Pride Month in North Clackamas School District

WHEREAS, North Clackamas Schools shares in the belief that diversity is our greatest strength and our lesbian, gay, bisexual, transgender, queer+ (LGBTQ+) students and staff have the same rights guaranteed to their peers; and

WHEREAS, each year, the month of June honors the 1969 Stonewall riots in Manhattan and the National Education Association has included LGBTQ+ Pride Month in its list of commemorative months since 1995; and

WHEREAS, we believe, like Jason Collins, the first openly gay major American sports athlete who said, "openness may not completely disarm prejudice, but it's a good place to start"; and

WHEREAS, LGBTQ+ youth are almost five times as likely to have attempted suicide compared to straight cis gender youth and each episode of LGBTQ+ victimization, such as physical or verbal harassment or abuse, increases the likelihood of self-harming behavior by 2.5 times on average; and

WHEREAS, a national study found that 40 percent of transgender adults reported having made a suicide attempt, with 92 percent of these individuals reported having attempted suicide before the age of 25; and

WHEREAS, having a gender sexuality alliance reduces a child's risk of attempting suicide by 50 percent and students at schools with gender sexuality alliances experience less bullying around gender non-conformity; and

WHEREAS, federal law guarantees students the right to form gender sexuality alliance clubs where other non-curricular clubs exist and our community is better because of the diversity of our population; and

WHEREAS, inclusion is a core value of our district and the school board is committed to helping end the crisis of suicide in our community by creating a safe and welcoming school district for all students;

NOW, THEREFORE, the North Clackamas School District Board of Directors proclaims June 2024 to be LGBTQ+ PRIDE MONTH and urges our community to join us in celebrating the diverse gender identity and sexual orientation that exists among our students, staff and community.

Adopted this 23rd day of May, 2024.

Signed:

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Chair, Jena Benologa, School District Board of Directors

**SCHOOL PRESENTATION:**  
**SABIN-SHELLENBERG PROFESSIONAL TECHNICAL CENTER**

**PRESENTATION**  
Agenda Item #2  
May 23, 2024

**SUPERINTENDENT’S RECOMMENDATION:**

This item is presented for Board Information.

**BACKGROUND:**

This year, a school will be highlighted each month and will make a presentation to the School Board to engage in a discussion on student achievement.

A significant component of the North Clackamas high school experience and district mission is the opportunity for all students to explore career and technical education at Sabin-Schellenberg Professional Technical Center. We offer numerous elective classes in 18 different career fields as well as a teen parent program. Many of our programs have college articulation allowing students to earn dual high school and college credit (at area community colleges). By taking career-related electives, students learn the skills, knowledge, and workplace behaviors they will need post-high school as they continue their education and when entering the workforce.

**ATTACHMENTS:**

- A. [SSC Career Trees for all programs of study](#)
- B. [SSC Board Presentation](#)

**PRESENTERS / STAFF CONTACT:**

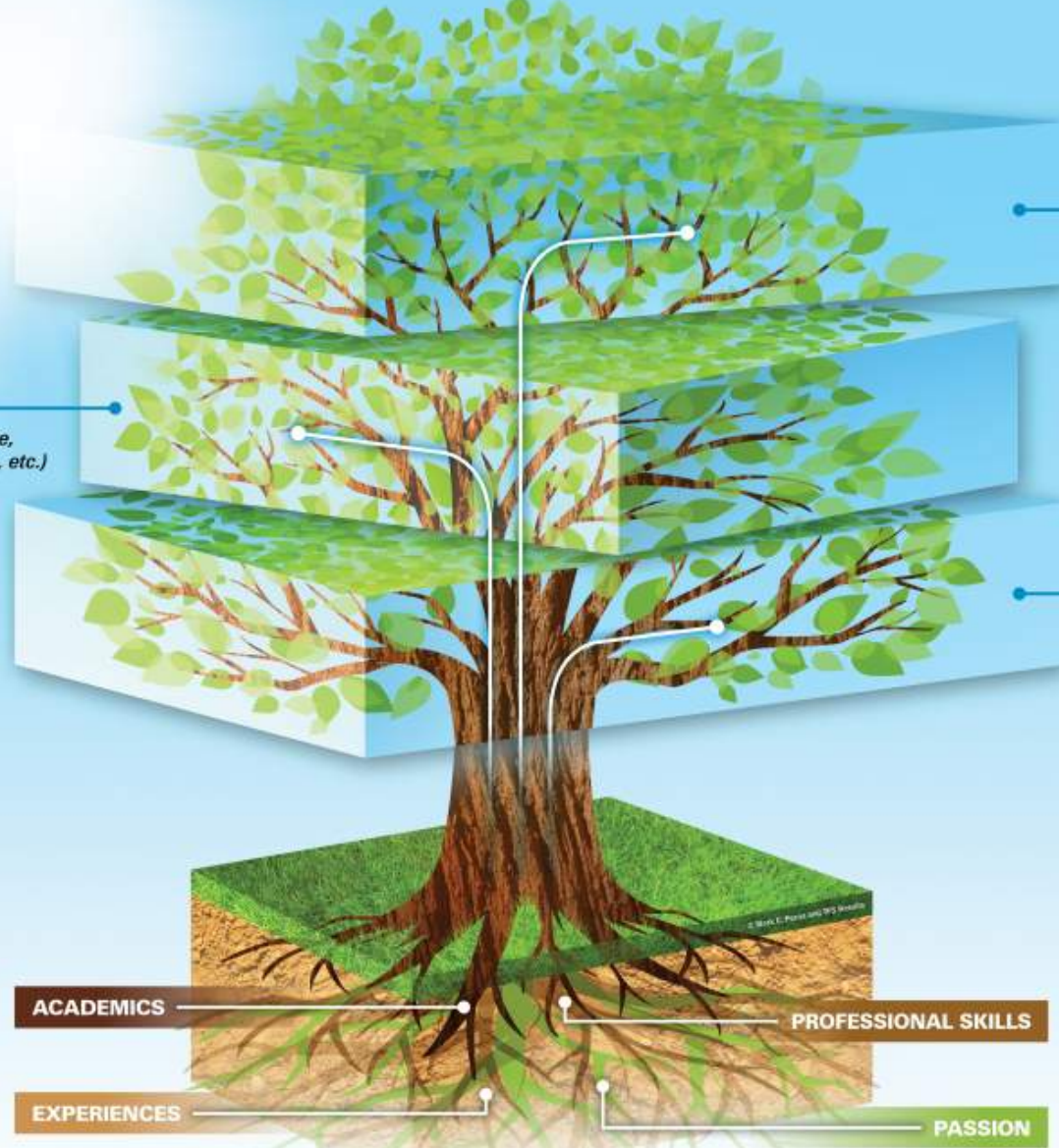
Ivonne Dibblee, Assistant Superintendent of Education  
Ajai Huja, Principal, Sabin-Schellenberg Professional Technical Center  
Lindsay Kane, Counselor, Sabin-Schellenberg Professional Technical Center



**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Accounting Assistant
- Accounting Clerk
- Accounts Payable Clerk
- Accounts Receivable Clerk
- Bookkeeper
- Cost Accounting Clerk
- Real Estate Agent
- Payroll Clerk
- Tax Accounting Clerk
- Tax Examiner
- Banker
- Commercial Loan/Escrow Processor



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Financial Software Developer
- Auditor
- Certified Public Accountant
- Chief Financial Officer
- Financial Advisor/Planner
- Stockbroker
- Investment Banker
- Corporate Accountant
- Not for Profit Accountant
- Bank Compliance Officer
- Financial Analyst
- Tax Accountant

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Accountant Assistant
- Accounts Clerk
- Bank Teller
- Data Entry Clerk
- Entrepreneur/Owner
- Junior Tax Preparer
- Statement Clerk
- Records Manager
- Customer Service Representative
- Administrative Assistant
- Mortgage Loan Assistant
- Claims Adjuster

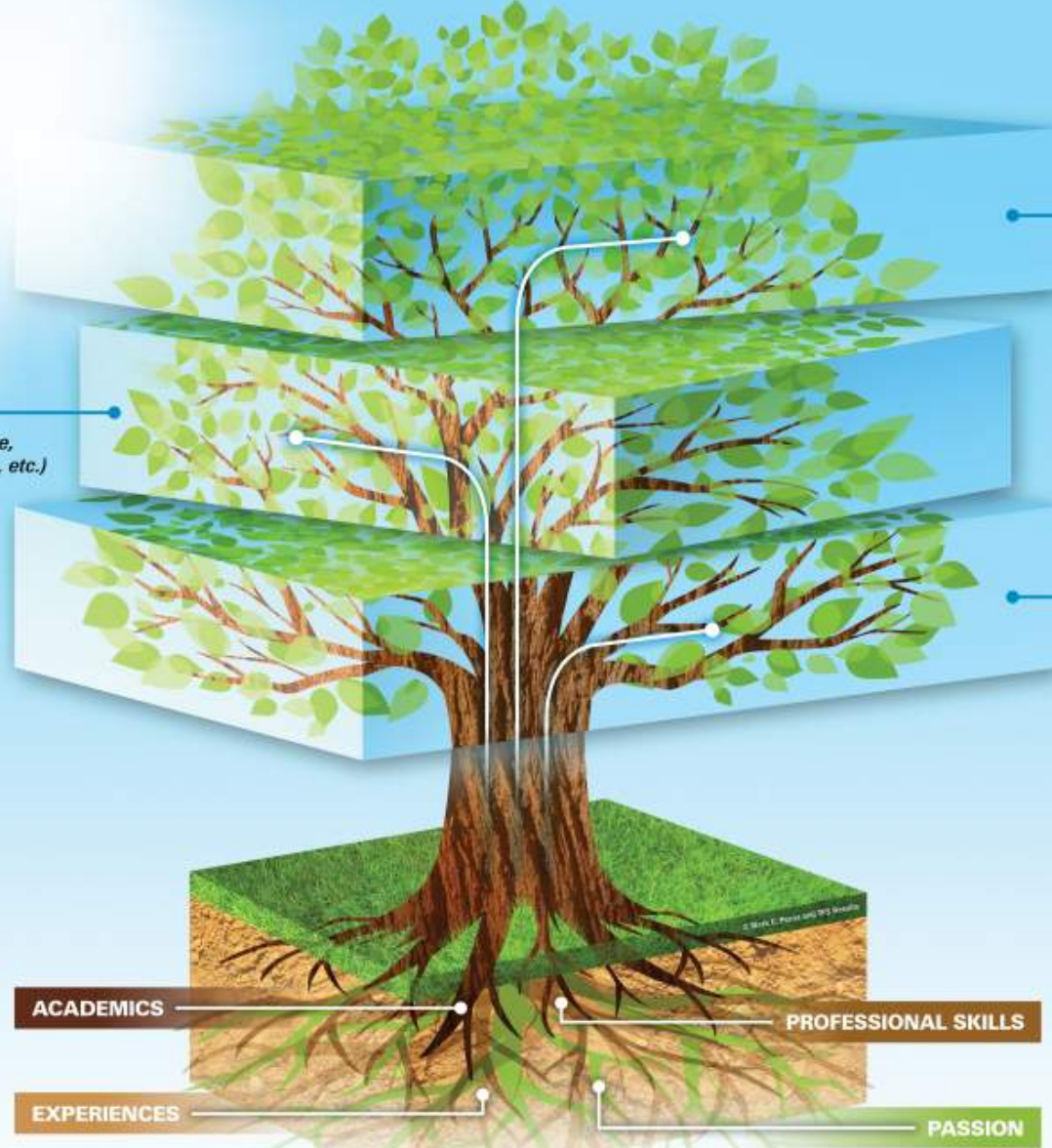




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Ag Ed Technical Assistant
- Veterinary Tech
- Florist
- Sales/Account Manager
- Crop Specialist/Field Rep
- Ag Diesel Mechanic
- Ag Advertising/Web Designer
- Irrigation & Materials Manager
- Livestock Broker
- Propagation Specialist
- Agribusiness Owner
- Greenhouse/Nursery Manager



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Agriculture Educator
- Veterinarian
- Botanist
- Animal Nutritionist
- Agronomist
- Ag Equipment Engineer
- Marketing Director
- Farmer/Rancher
- Conservation/Restoration Specialist
- Environmental Scientist
- Wildlife Biologist
- Landscape Architect

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Ag Tourism Facilitator
- Kennel Assistant
- Flower Shop Employee
- Feed Store Employee
- Pet Sitter
- Seed & Fertilizer Retail Sales
- Parts Salesperson
- Retail Salesperson/Product Display
- Landscape Installation
- Irrigation & Livestock Handler
- Nursery Employee
- Pet Store Employee

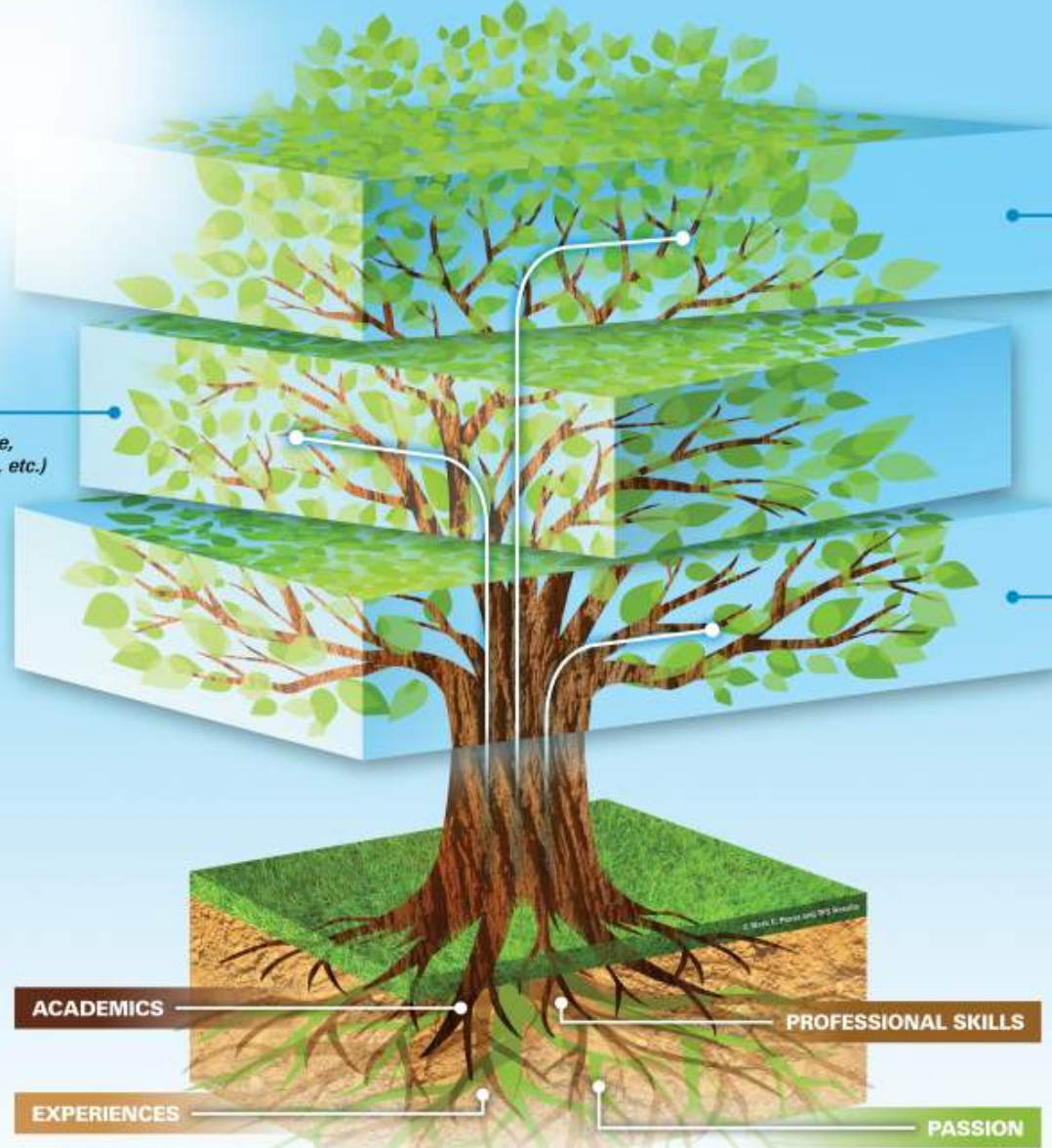




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- CAD/BIM Manager
- Project Manager
- Construction Manager
- Construction and Building Inspector
- 3D Animator
- Architectural Drafter
- Architectural Illustrator
- Computer-Controlled Machine Programmer
- Construction Carpenter
- Fabricator
- Graphic Artist
- Model Maker



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Architect
- Mechanical Engineer
- Structural Engineer
- Civil Engineer
- Interior Designer
- Landscape Architect
- Commercial & Industrial Designer
- Aerospace & Aeronautical Engineer
- Architectural Engineer
- Building Scientist
- City Designer
- Environmental Designer

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Drafter
- 3D Modeler
- House Designer
- Product Designer
- Technical Illustrator
- CAD Operator
- Architectural Project Assistant
- Architectural Illustrator
- Computer-Controlled Machine Operator
- Construction Worker
- Engineer's Assistant
- Revit Technician

ACADEMICS

PROFESSIONAL SKILLS

EXPERIENCES

PASSION

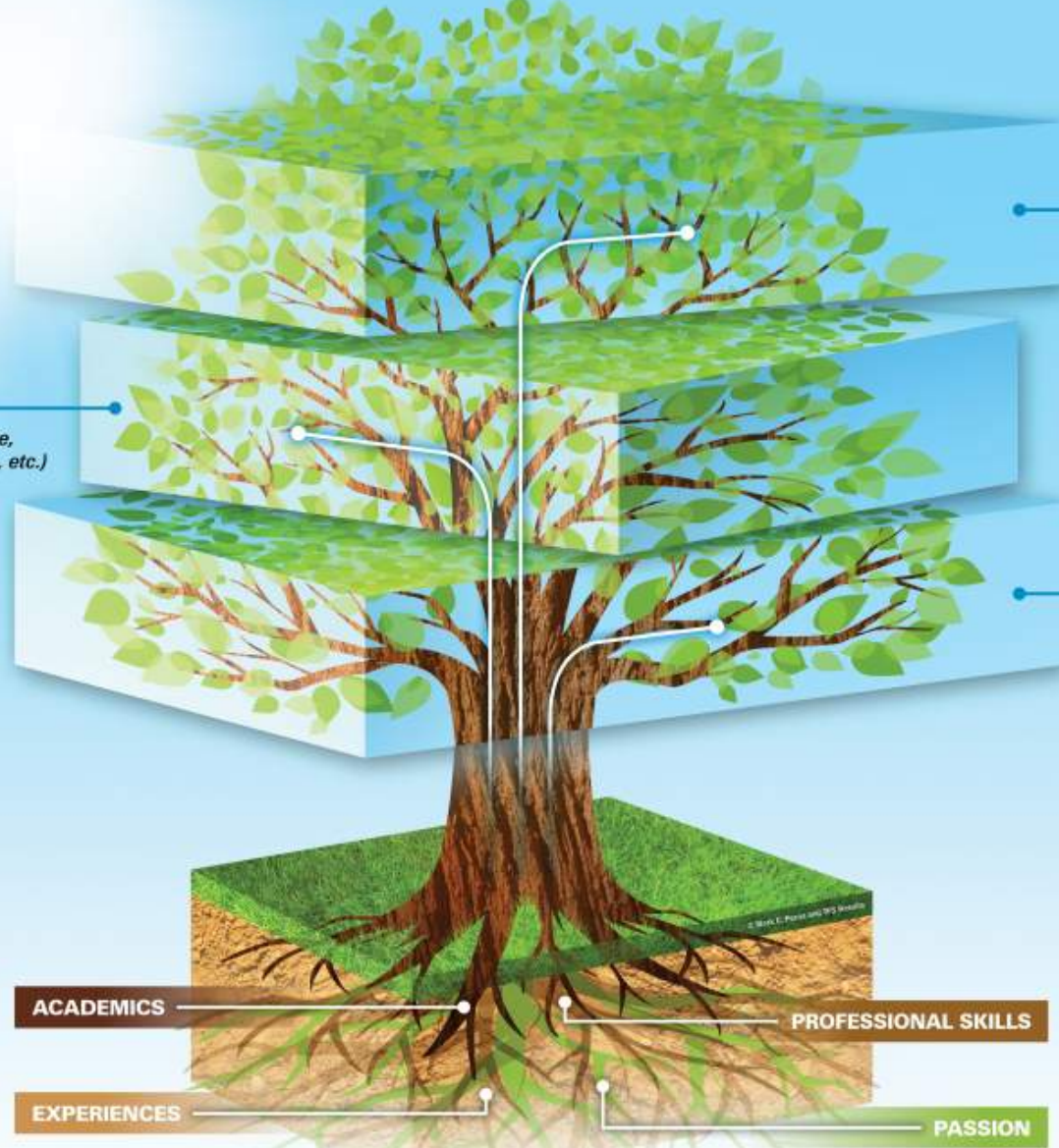




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Field Service Technician
- Store Manager
- Shop Foreman
- Heavy Equipment Mechanic
- ASE Certified Technician
- Government/City Fleet Technician
- Automotive Instructor
- Auto Parts Specialist
- State Consultant
- Shop Owner
- Professional Driver
- Auto Tech Support



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Automotive Design Engineer
- Service Director
- Senior Mechanic
- Technical Services Director
- Dealership Owner
- Automotive Service Information Specialist
- Quality Assurance Director
- Content Developer
- Race Team Manager
- ASE Master Certified Technician
- NASCAR Pit Crew Member
- Automotive Journalist

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Entry-Level Service Technician
- Theme Park Ride Technician
- Service Advisor
- Insurance Adjuster
- Fleet Mechanic
- Subaru/Toyota/Ford Certified Technician
- Light Duty Diesel Mechanic
- Smog Technician
- Repair Appraiser
- Automotive Detailer
- Dealership Sales Associate
- Alignment Technician

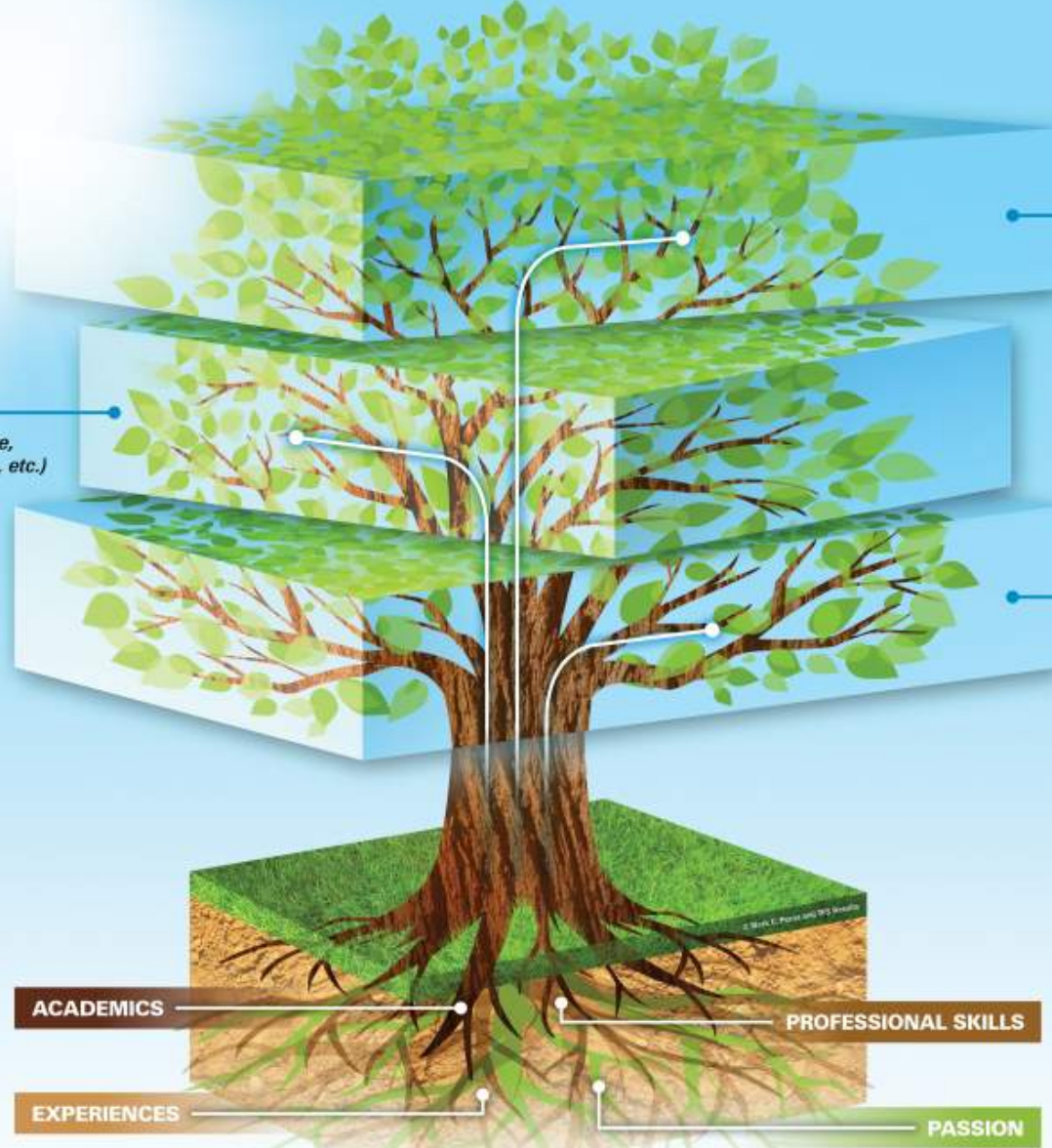




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Lighting Director
- Set Designer
- Actor
- Voiceover Actor
- Podcast Host
- Press Director
- Speechwriter
- Broadcasting Teacher
- Program Director
- General Manager
- Broadcast Sales
- Public Relations Manager



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Sports Broadcaster
- Radio News Anchor
- Network News Anchor
- Network Television Producer
- Program Director
- Newspaper Journalist
- Radio Announcer
- Scriptwriter
- Movie Producer
- Film and Video Editor
- News Director
- Special Effects Coordinator

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Costume Designer
- Grip
- Foley
- Songwriter
- Singer
- Commercial Writer
- Spokesperson
- Boom Operator
- Prop Master
- Copywriter
- Storyboard Artist
- Camera Operator

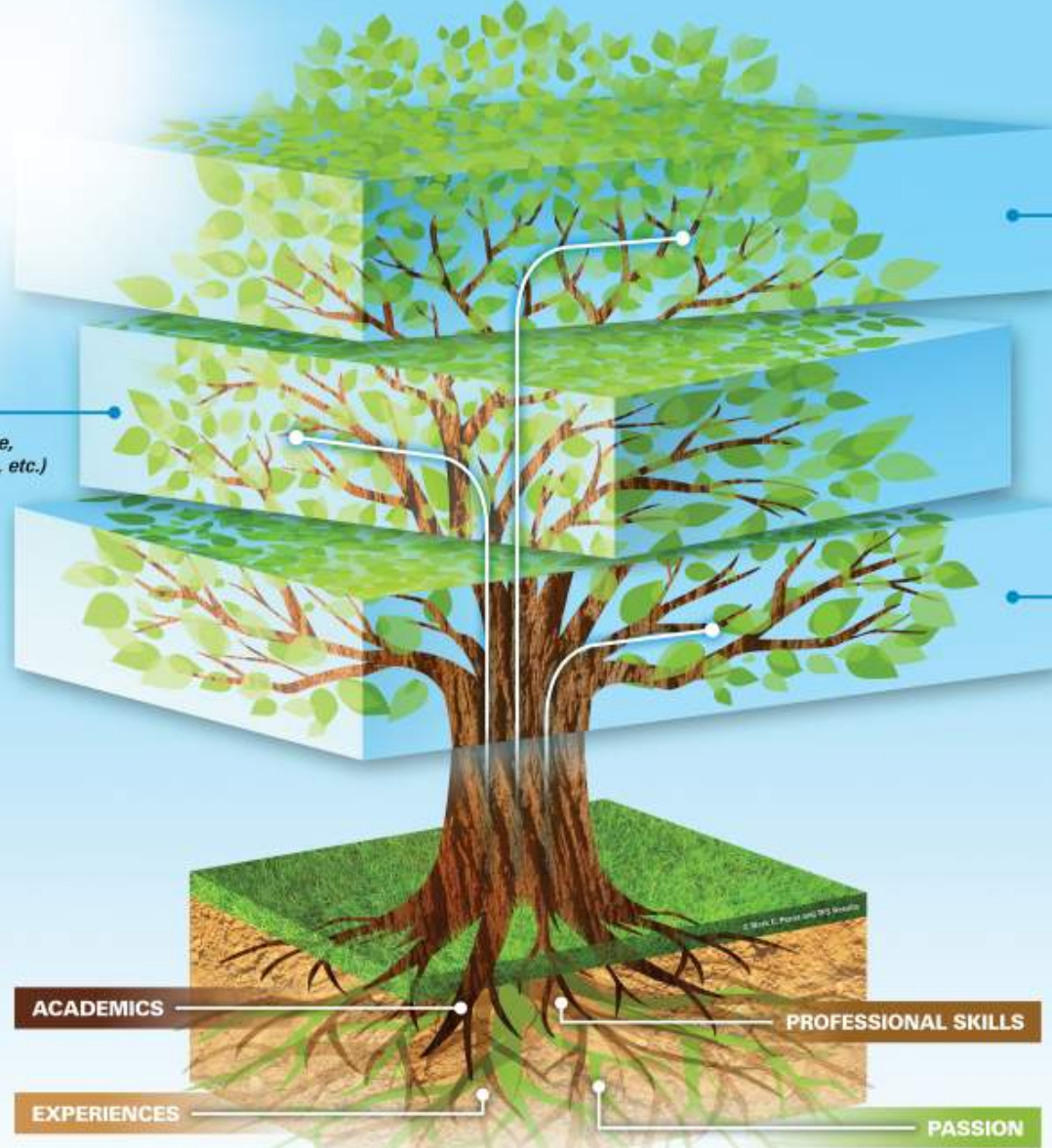




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Project Manager
- Sales Supervisor
- Assistant/General Manager
- Supply Chain Manager
- Digital Marketing Manager
- Product Manager
- Market Research Analyst
- Accounting Clerk
- Entrepreneur
- Real Estate Agent
- Commercial Loan/Escrow Processor
- Warehouse Buyer



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Chief Operating Officer (COO)
- Management Consultant
- Financial Advisor
- Human Resources Manager
- Business Owner
- Chief Financial Officer (CFO)
- Strategic Communications Officer
- Non-profit Executive Director
- Systems Analyst
- Financial Analyst
- Event Manager
- Hospitality Administrator

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Administrative Assistant
- Customer Service Representative
- Sales Associate
- Data Entry Clerk
- Accounting Assistant
- Marketing Assistant
- Human Resources Assistant
- Market Research Assistant
- Receptionist
- Intern
- Bank Teller
- Retail Clerk

ACADEMICS

PROFESSIONAL SKILLS

EXPERIENCES

PASSION



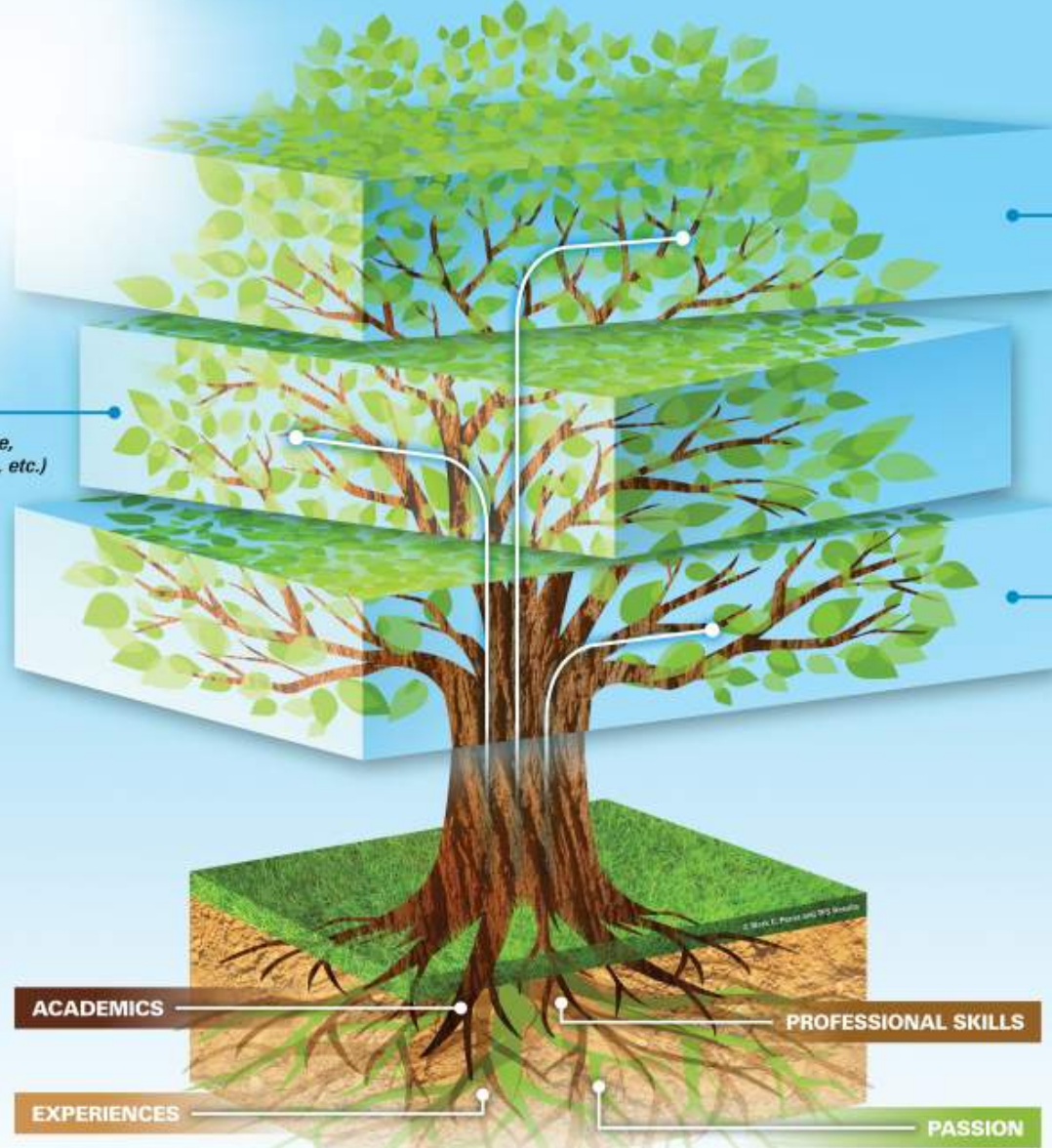
# EDUCATION WITH PURPOSE CAREER TREE



## TECHNICAL CAREERS

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Building Inspector
- Surveyor
- Estimator
- Union Carpenter
- Licensed Electrician
- Licensed Plumber
- Union Cement Mason
- General Contractor
- Specialized Contractor
- Historic Restoration Specialist
- House Flipper
- Site Supervisor



## PROFESSIONAL CAREERS

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Civil/Structural Engineer
- Architect
- Career/Technical Educator
- Design Builder
- Building Engineer
- City Planner/Engineer
- Design & Build Manager
- Interior Designer
- Site Superintendent
- Business Owner/Entrepreneur

## ENTRY-LEVEL CAREERS

*(with Program Completion)*

- Carpenter Apprentice
- Construction General Laborer
- Demolition Laborer
- Cabinetmaker
- Furniture Designer/Maker
- Home Improvement Store Associate
- Construction Site Laborer
- Building Supplies Store Associate
- Construction Materials Sales Representative
- Electrician Apprentice
- Masonry Apprentice
- Plumber Apprentice

ACADEMICS

PROFESSIONAL SKILLS

EXPERIENCES

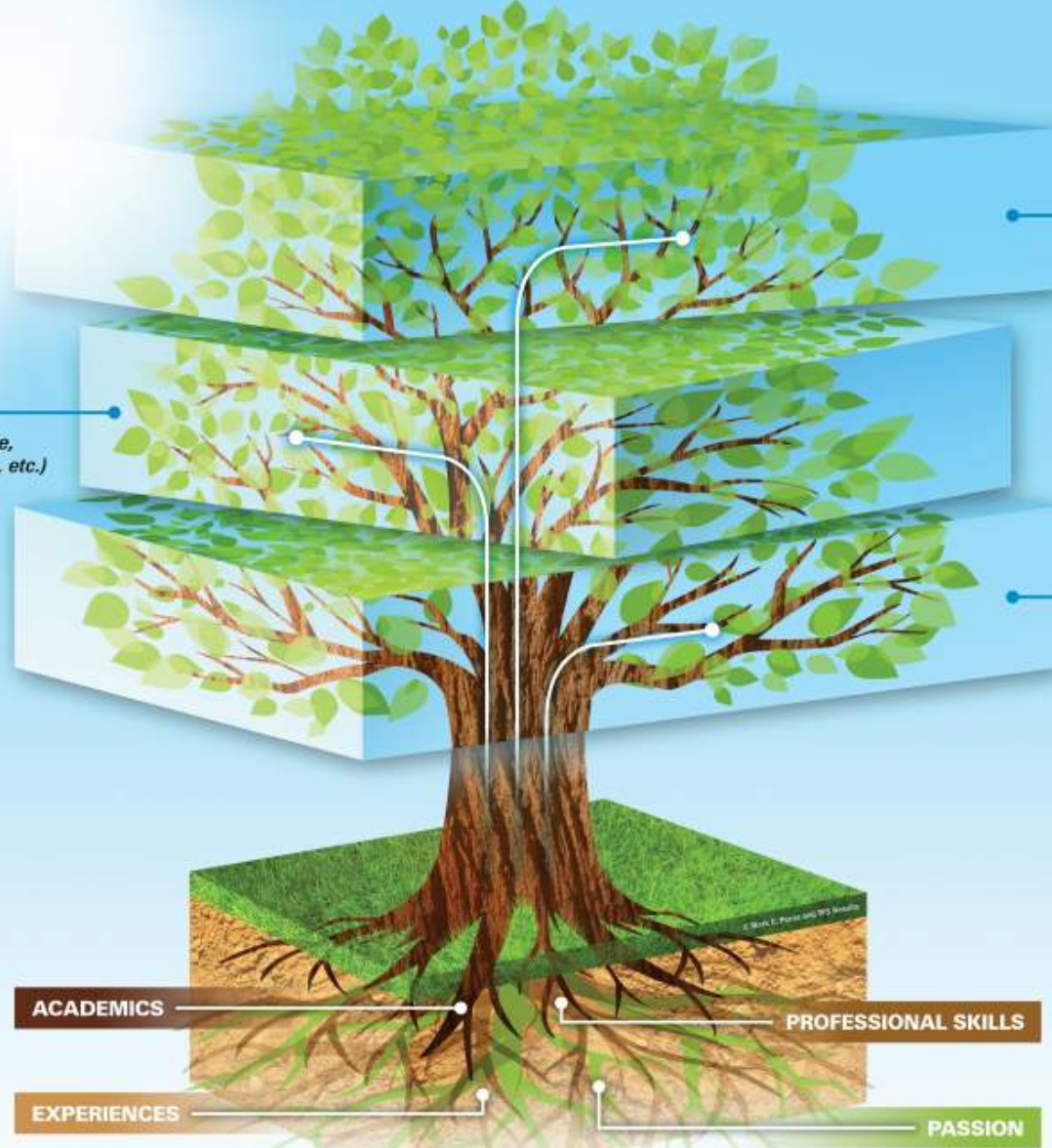
PASSION



**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Blow Dry Bar Stylist
- Hair Removal Specialist
- Barber
- Esthetician
- Hair Stylist
- Manicurist
- Natural Hair Stylist
- Film/TV Stylist
- Beauty Consultant
- Haircolor Specialist
- Product Sales Consultant



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Beauty Magazine Writer/Editor
- Salon/Spa Owner
- Salon Educator
- State Board Inspector
- Trade Show Director
- Theater & Movie Stylist/Makeup Artist
- Career/Technical Educator
- Product Design Consultant
- Cosmetology Instructor
- Medical Skin Care Specialist
- Trade Show Director
- Special Effects Hair & Makeup Artist

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Salon Sales Consultant
- Beauty Supply Store Associate
- Distributor Sales Consultant
- Barber Assistant
- Junior Stylist
- Makeup Artist
- Cruise Ship Stylist
- Hair Design Assistant
- Retail/Marketing Assistant
- Salon Assistant/Receptionist

ACADEMICS

PROFESSIONAL SKILLS

EXPERIENCES

PASSION

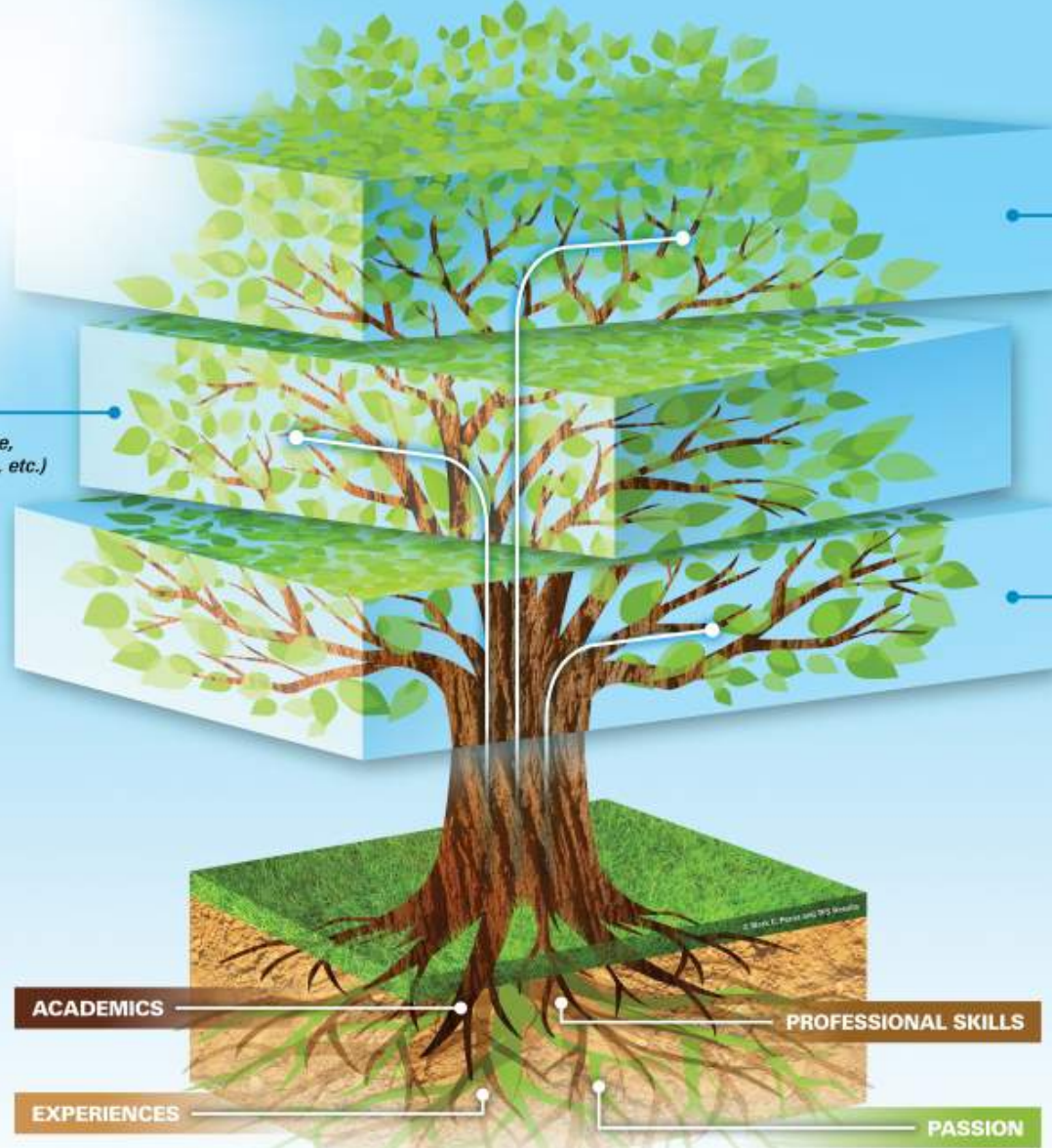




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Test Kitchen Manager
- Baker/Bakery Manager
- Catering Specialist/Manager
- Chocolatier/Confectioner
- Food & Beverage Manager
- Food Stylist/Food Photographer
- Food Truck Operator/Entrepreneur
- Professional Chef
- Recipe Developer
- Sous Chef
- Cheesemonger



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Corporate Chef
- Culinary Consultant
- Culinary Instructor
- Culinary Scientist
- Executive Chef
- Executive Pastry Chef
- Food Writer/Culinary Journalist
- Culinary Trendologist
- Dietitian
- Research & Development Chef
- Restaurant Entrepreneur/Owner
- Personal Chef

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Baker
- Cake Decorator
- Cook
- Dishwasher
- Garde-Manger Chef
- Grill Cook
- Line Cook
- Sauté Cook
- Prep Cook
- Server/Host
- Banquet Cook
- Cruise Ship Food Worker

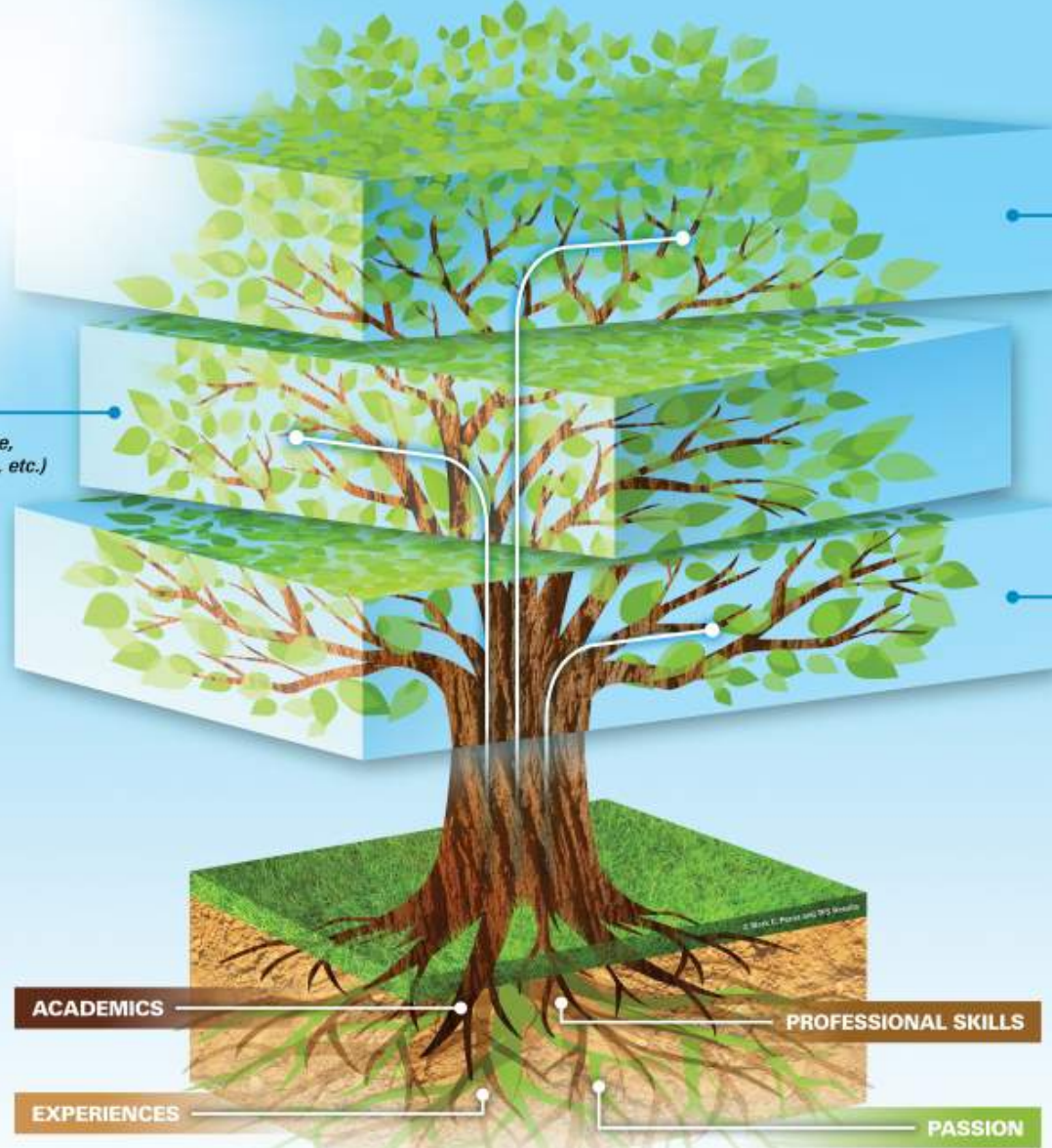




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Animator
- Book Illustrator
- Desktop Publisher
- Digital Graphic Designer
- Exhibition Display Designer
- Game Designer/Developer
- Graphic Designer
- Logo Designer/Illustrator
- Multimedia Artist & Animator
- App Developer
- Website Designer
- VX Designer



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Architect/Industrial Designer
- Art Director
- Concept Artist
- Creative Director
- Digital Design Specialist
- Fashion Designer
- Graphic Designer – Senior Level
- Illustrator
- Multimedia Artist/Animator
- Video Game Developer
- Visual Effects Artist
- 3D Animator

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Copy Center Associate
- Freelance Artist
- Junior Graphic Designer
- Logo Designer
- Packaging Designer
- Page Layout Artist
- Print & Web Sales Associate
- Print Editor
- Print Shop Assistant
- Production Assistant
- Web Designer
- Sign & Banner Associate

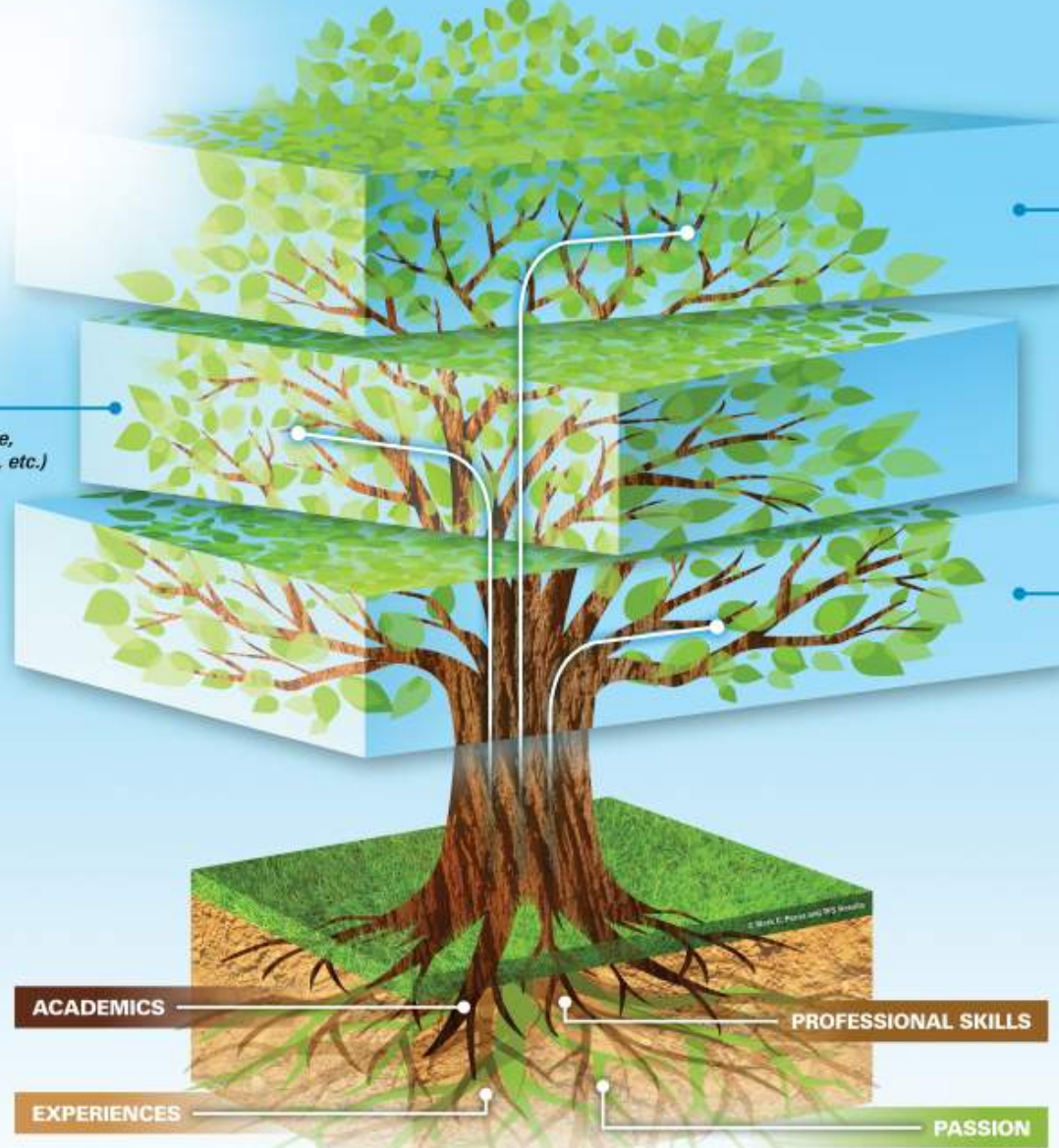




### TECHNICAL CAREERS

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Administrative Assistant
- After School Program Director
- Associate Preschool Teacher
- Camp Director
- Child Welfare Specialist
- Coach
- Daycare Business Owner
- Interpreter
- Nanny or Au Pair
- Resource Officer
- Academic Advisor
- Classroom Paraprofessional



### PROFESSIONAL CAREERS

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Preschool Teacher
- Elementary School Teacher
- Middle/High School Teacher
- School Counselor
- Social Worker
- Librarian
- School Psychologist
- Athletic Director
- Principal/Assistant Principal
- Speech Language Psychologist
- Superintendent
- Therapist

### ENTRY-LEVEL CAREERS

*(with Program Completion)*

- Activity Camp Assistant
- Assistant Preschool Teacher
- Attendance/Guidance Secretary
- Child Portrait Photographer
- Family Advocate
- Instructional Assistant/ Classroom Aide
- Recess Aide
- Special Needs Assistant
- Tutor
- Community/Outreach Coordinator
- Library/Media Assistant
- Behavioral Technician

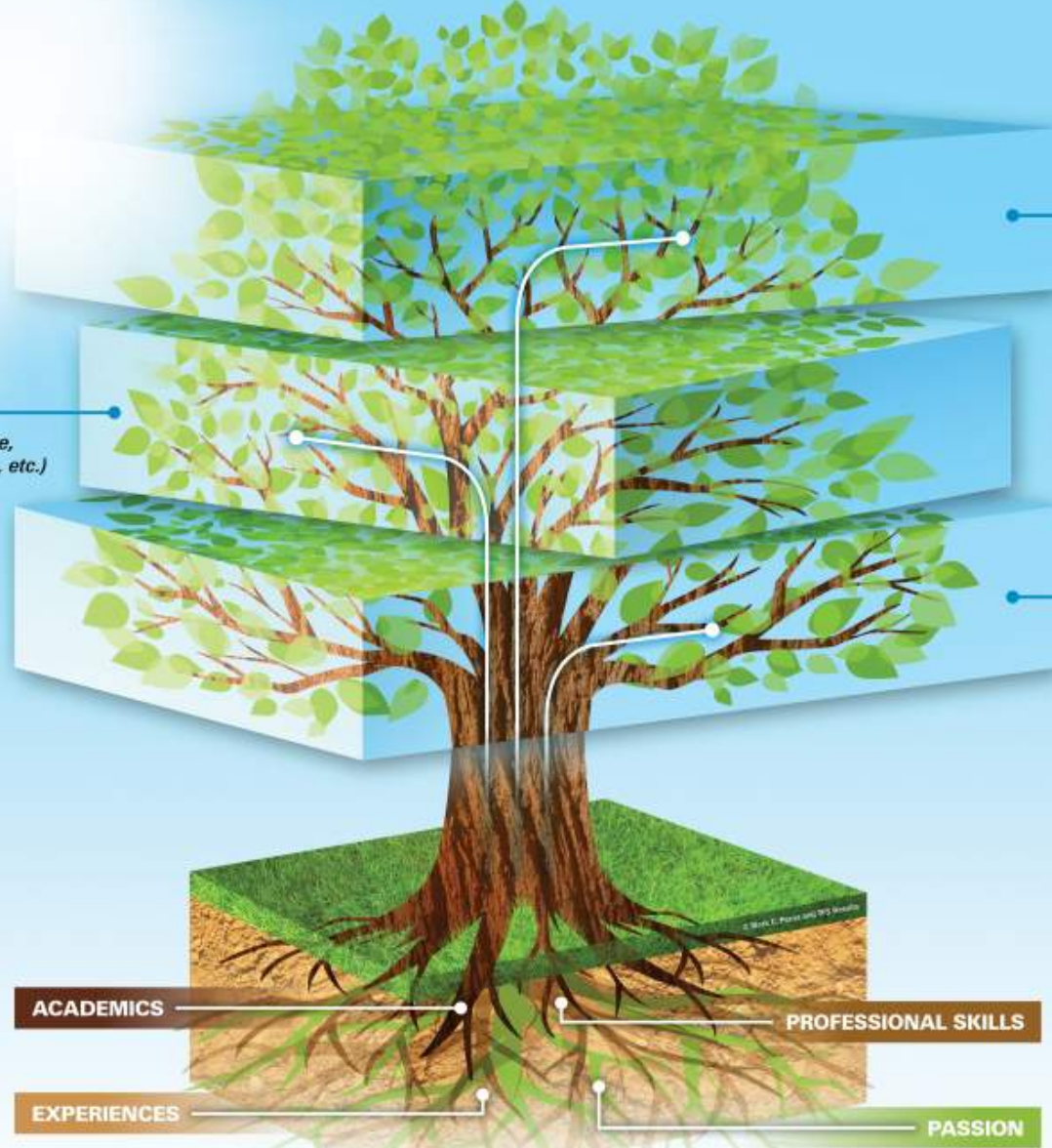




### TECHNICAL CAREERS

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Aircraft Service Worker
- Biomedical Field Service Technician
- Electrician
- PLC Programmer
- Site Support Network Systems Administrator
- Customer Support
- Automation Technician
- Nuclear Power Operator
- Instrumentation Technician
- Communication Technician
- Master Field Service Technician
- Alternative Energy Technician



### PROFESSIONAL CAREERS

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Aerospace Engineer
- Avionics Engineer
- Biomedical Engineer
- Career/Technical Educator
- Computer Engineer
- Electrical Engineer
- Electronics Engineer
- Process Engineer
- Software Engineer
- Hardware/Systems Engineer
- Nuclear Engineer
- Industrial Engineer

### ENTRY-LEVEL CAREERS

*(with Program Completion)*

- Aerospace Technician
- Avionics Technician
- Biomedical Technician
- Calibration Technologist/Technician
- Electronics Sales Associate
- Industrial Engineering Technologist/Technician
- Computer Hardware Technician
- Electrical & Electronic Technologist/Technician
- Field Service Technician
- Repair Technician
- Systems Technician
- Computer Software Technician

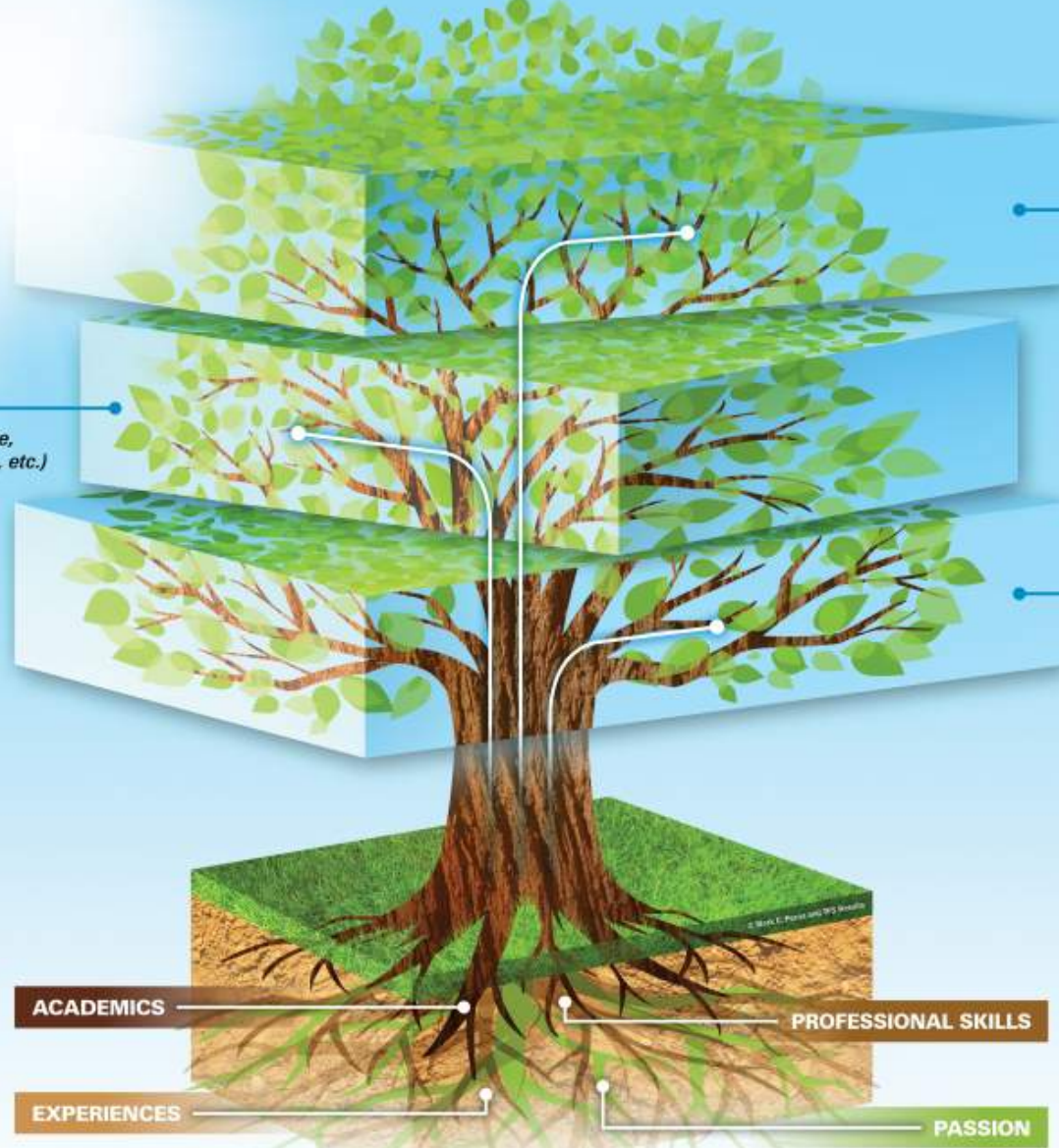




### TECHNICAL CAREERS

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Forest Technician
- Wildland Firefighter
- Wildlife Rehabilitation Specialist
- Arborist
- Conservation Technician
- Water Quality Technician
- Fisheries Technician
- Geographic Information System Tech
- Land Surveyor
- Forest Equipment Operator
- Forest Inventory Specialist
- Wildlife Control Operator



### PROFESSIONAL CAREERS

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Forester
- Wildlife Biologist
- Range Manager
- Environmental Scientist
- Hydrologist
- Geospatial/GIS Analyst
- Natural Resources Economist
- Forest Engineer
- Soil Scientist
- Fisheries Biologist
- Natural Resource Manager
- Conservation Biologist

### ENTRY-LEVEL CAREERS

*(with Program Completion)*

- Forest/Conservation Worker
- Tree Planting Technician
- Forest Fire Prevention Technician
- Wildlife Technician Assistant
- Fish Hatchery Assistant
- Environmental Technician
- Natural Resource Aide
- Parks and Recreation Assistant
- Forest Equipment Technician
- Soil and Conservation Technician Assistant
- Watershed Restoration Technician
- Trail Maintenance Worker

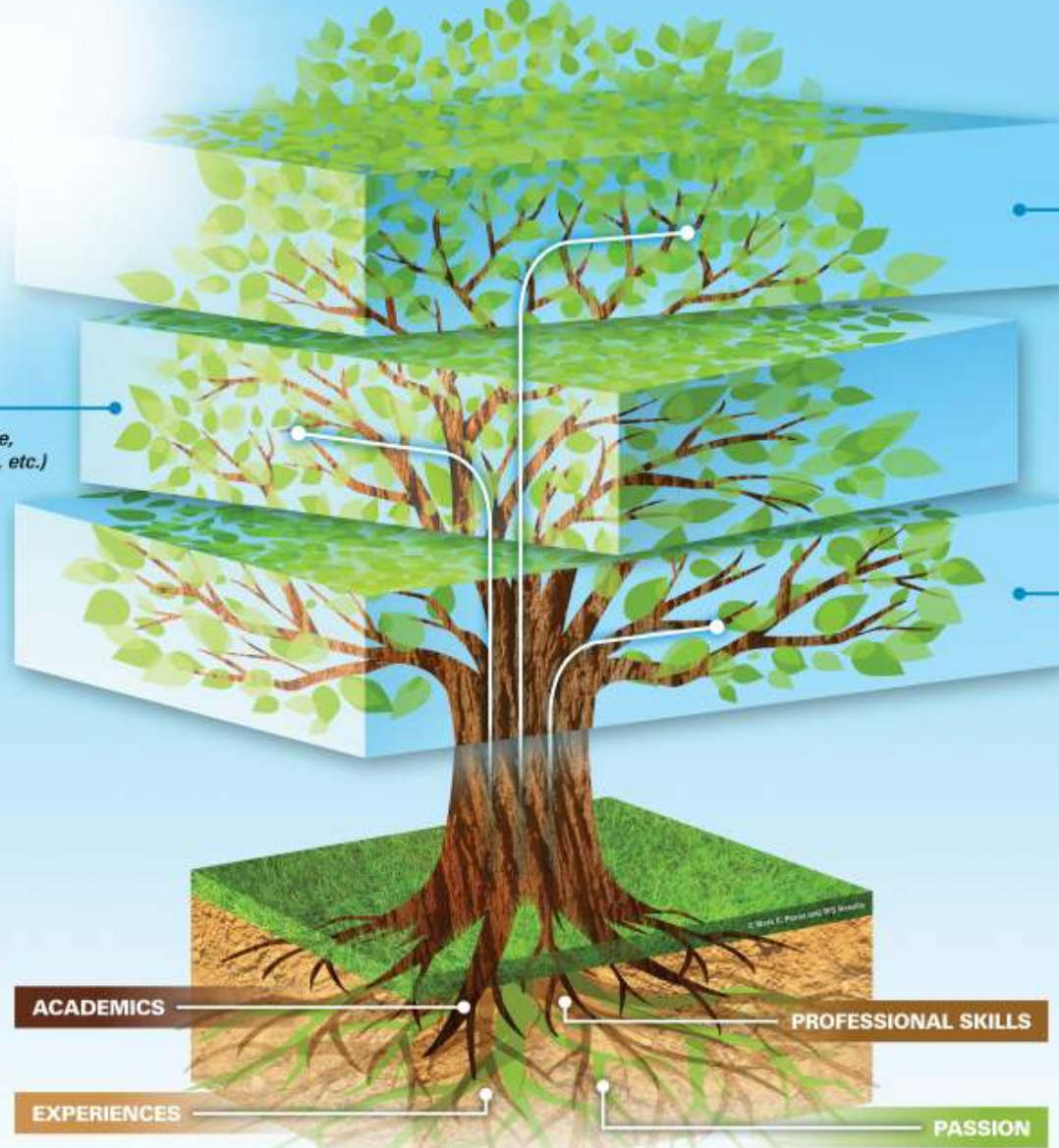




### TECHNICAL CAREERS

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Radiology Technician
- Surgical Technician
- Ultrasound Technician
- Medic/EMT
- Licensed Practical Nurse
- Clinical Laboratory Technician
- Healthcare Administrator
- MRI Technician
- Vascular Technician
- Health Informatics Technician
- Behavioral Health Technician
- Military Corpsman



### PROFESSIONAL CAREERS

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Registered Nurse
- Nurse Practitioner
- Medical Doctor
- Doctor of Osteopathy
- Nurse Anesthetist
- Physician's Assistant
- Medical Researcher
- RN Nurse Administrator
- Chiropractic Physician
- Athletic Trainer
- Veterinarian
- Nurse Midwife

### ENTRY-LEVEL CAREERS

*(with Program Completion)*

- Nurse Assistant
- Medical Assistant
- Phlebotomist
- Ophthalmology Assistant
- Occupational Therapy Assistant
- Community Health Worker
- Medical Transcriptionist
- Medical Billing Coder
- EKG Technician
- Pharmacy Technician
- Medication Aide

ACADEMICS

PROFESSIONAL SKILLS

EXPERIENCES

PASSION

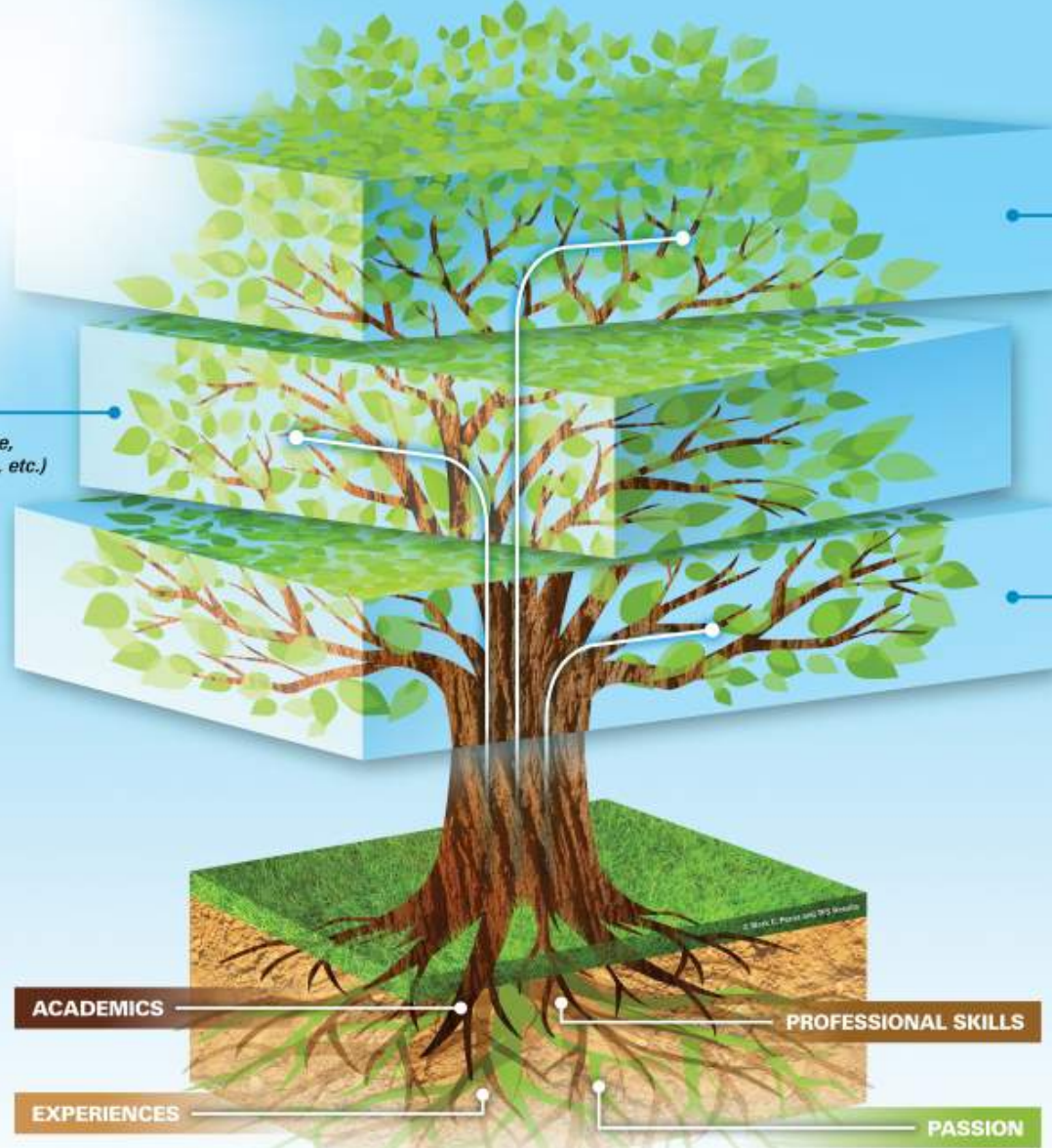




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Computer Forensics
- Crime Laboratory Analyst
- Police Officer
- Customs Agent
- Bailiff
- Court Reporter
- Court Clerk
- Law Librarian
- Medical Examiner
- Correctional Treatment Specialist
- Parole Officer
- Border Patrol Agent



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Fraud Investigator
- Federal Air Marshal
- Judge
- FBI Agent
- CIA Investigator
- Customs Investigator
- ATF Agent/Investigator
- US Marshal
- Forensic Accountant
- Attorney
- Forensic Pathologist
- Cyber Security Director

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Loss Prevention Specialist
- Security Guard
- Private Detective
- Bail Bonds Person
- Child Protective Services Worker
- Bounty Hunter
- Dispatcher
- Evidence Technician
- Corrections Officer
- TSA Screener
- Military Personnel
- Crime Scene Investigator

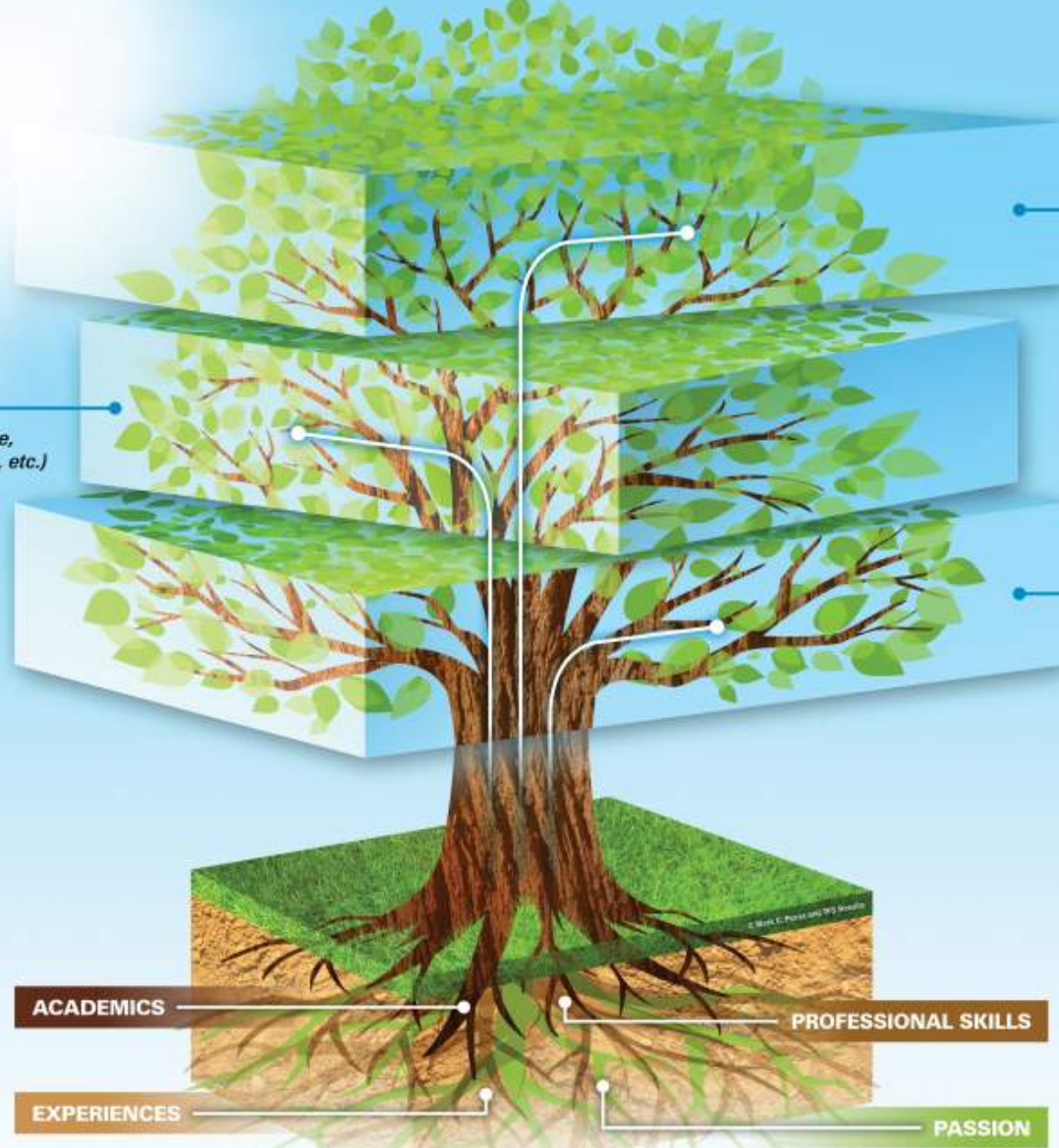




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Mold Maker
- Machine Tool Service Technician
- Tool and Die Maker
- Conventional Machinist
- Mechanical Engineer Technician
- Set up Technician
- CNC Machinist
- CNC Programmer
- 3D Printer Operator
- Industrial Designer
- Quality Inspector
- Manufacturing Engineer Technician



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Mechanical Engineer
- Manufacturing Engineer
- Metrologist
- Supervisor/Manager
- Machine Shop Owner/Entrepreneur
- Supply Chain Manager
- Supply Chain Analyst
- Metallurgist
- Product Marketing
- Industrial Salesperson
- Vice President of Sales
- Plant Manager

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- CNC Machine Operator
- Maintenance Technician
- Shipping and Receiving Clerk
- Apprentice Machinist
- Assembler
- Material Handler
- Apprentice/EDM Operator
- Drill Press Operator
- Deburring Technician
- Customer Service Representative
- Entry Level Programmer
- CMM Operator

ACADEMICS

PROFESSIONAL SKILLS

EXPERIENCES

PASSION

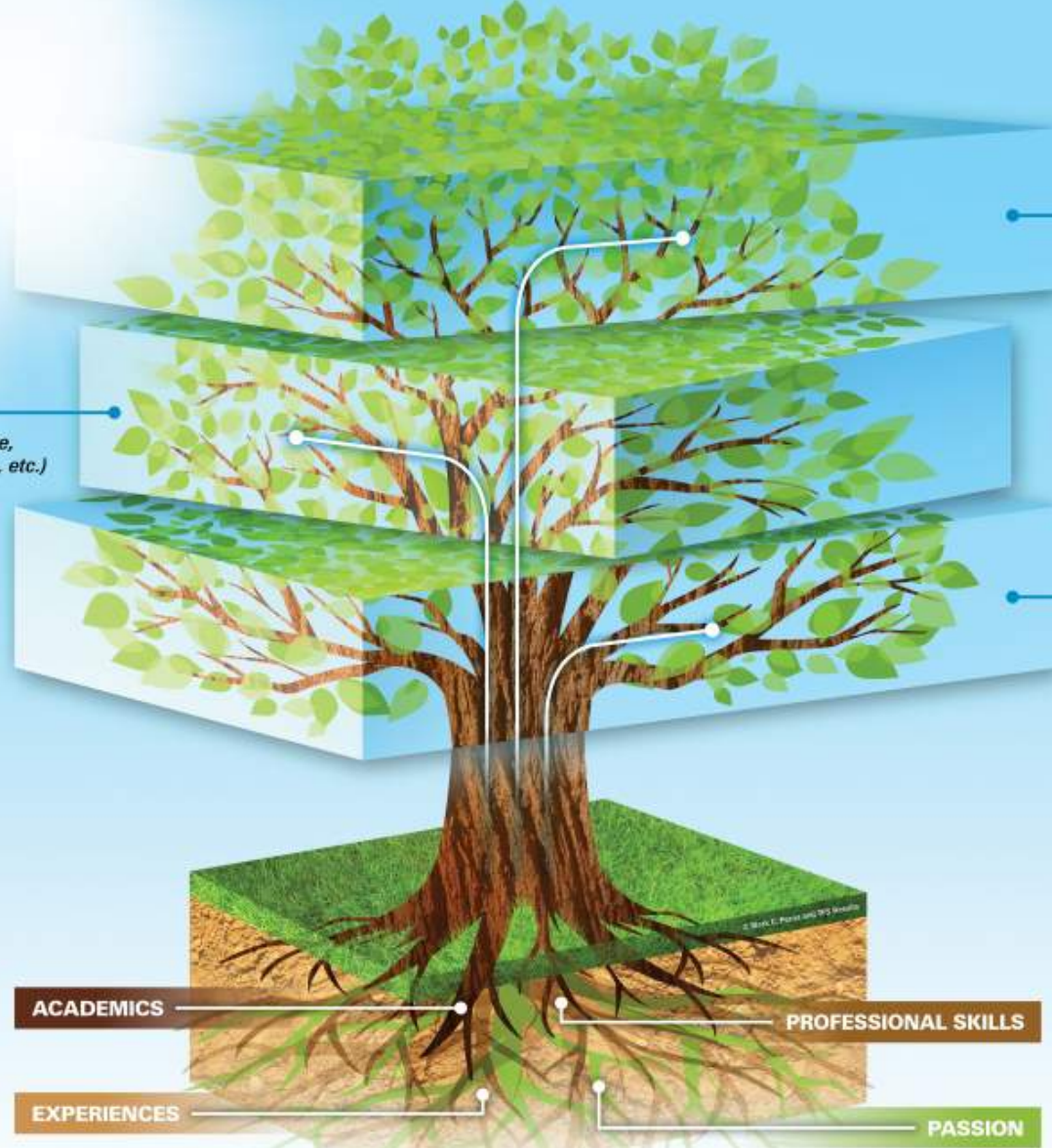




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Content Marketing Manager
- Copywriter
- Social Media Manager
- Advertising & Promotion Manager
- Communications Director
- Digital Products Manager
- Event/Meeting/Talent Planner
- Graphic Designer
- Fashion Merchandiser
- Market Research Analyst
- Account Executive
- Business/Franchise Owner



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Brand Manager
- Art Director
- Chief Marketing Officer (CMO)
- Public Relations Manager
- Product/Brand Director
- Entrepreneur
- Media & Communications Specialist
- Director of Communications
- Vice President of Marketing
- Director of Brand
- Communications & Marketing Manager
- Web Developer

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Administrative Assistant
- Purchasing Clerk
- Blogger/Vlogger
- Telemarketer
- Advertising Associate
- Customer Service Representative
- Marketing Associate
- Brand Ambassador/Promoter
- Merchandise Display & Window Trimmer
- Retail Sales Associate
- Program Assistant
- Sales Representative

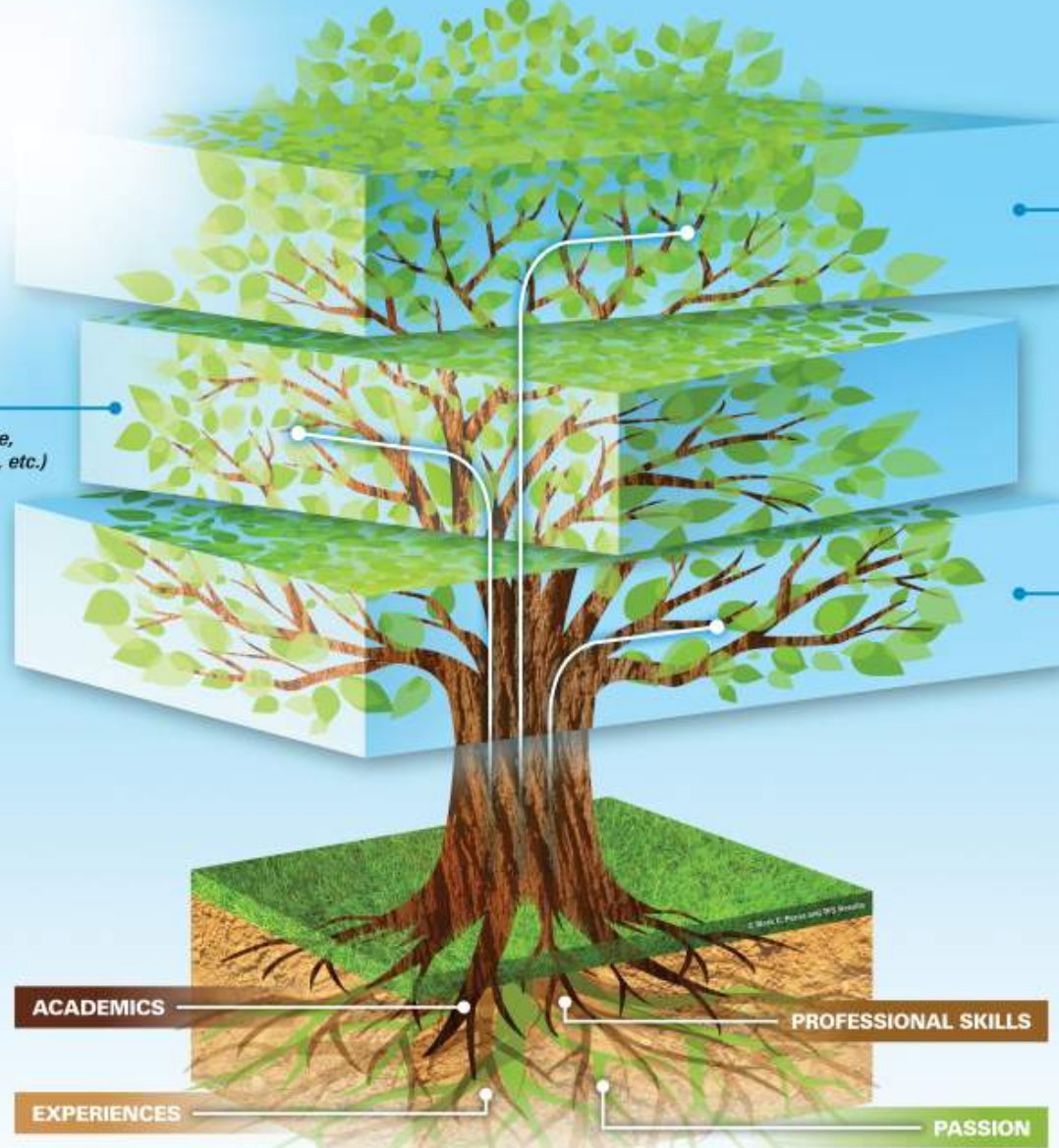




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Software Engineer
- Staff Engineer
- SCRUM Master
- Computer Science Professor
- Data Scientist
- Technical Analyst
- QA Analyst
- Database Administrator
- Senior UX Developer
- Software Engineer Manager
- Senior Frontend Engineer
- Fullstack Engineer



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Senior Software Engineer
- Principal Engineer
- Software Architect
- Senior Developer Manager
- Director of Engineering
- Technical Director
- Research Scientist
- Chief Technology Officer
- VP of Development
- Senior Staff Engineer
- Distinguished Engineer/Fellow
- Linux Subsystem Maintainer

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Junior Software Developer
- Data Analyst
- Dev/Ops Specialist
- QA Engineer
- Computer Science Teacher
- Associate Engineer
- Migrations Manager
- UX Engineer
- Web Developer
- Frontend Engineer
- Backend Engineer
- Test Engineer

ACADEMICS

PROFESSIONAL SKILLS

EXPERIENCES

PASSION

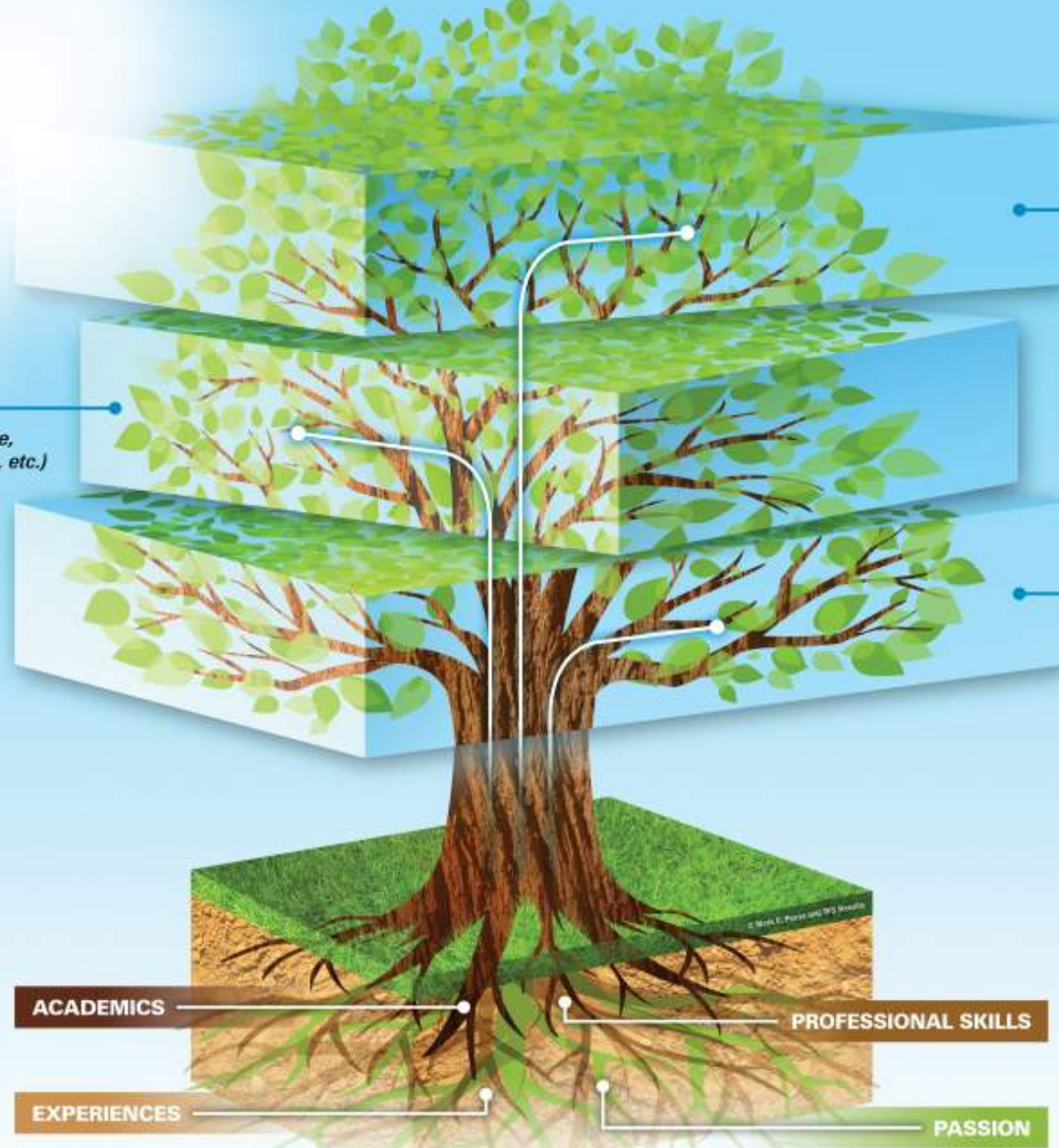




**TECHNICAL CAREERS**

*(Apprenticeship, Associate's Degree, Advanced Certification, Experience, etc.)*

- Certified Welder
- Welding Supervisor
- Welding Sales
- Welding Machine Repair Person
- Robotic Welding Machine Programmer
- Sheet Metal Worker
- Boilermaker
- Tool & Die Welder
- Steam Fitter/Pipe Fitter
- Iron Worker
- Pile Driver
- Blacksmith



**PROFESSIONAL CAREERS**

*(Bachelor's, Master's, Ph.D., Specialized Training, Experience, etc.)*

- Welding Engineer
- Metallurgist Engineer
- Diver/Welder
- Metallurgical Engineer
- Welding Supervisor
- Laser Beam Machine Operator
- Welding Inspector
- Ultrasonic Welding Machine Operator
- Sub Arc Operator
- Nuclear Welder
- Welding Instructor
- Aerospace Welder

**ENTRY-LEVEL CAREERS**

*(with Program Completion)*

- Welder Helper
- Welder/Fabricator
- Fitter
- Production Welder
- Apprentice Ironworker
- Apprentice Pipe Welder
- Grinder
- Millwright
- Fitter
- Welding Supplies Sales Person
- Robot Operator
- Maintenance Technician



# SABIN-SCELLENBERG PROFESSIONAL TECHNICAL CENTER

BOARD REPORT

MAY 23, 2024

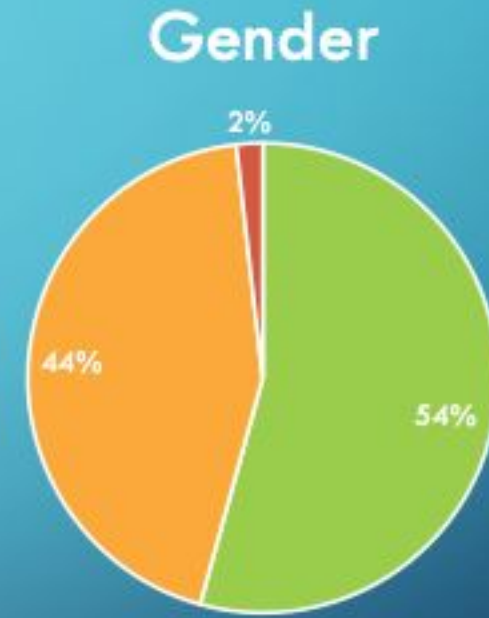
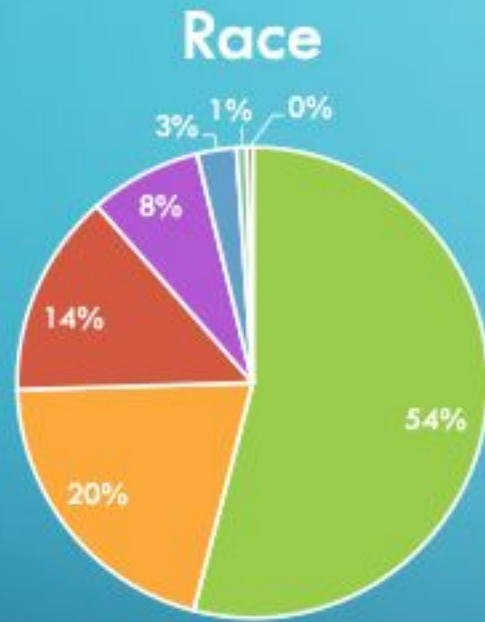


# OUR MISSION

Educating passionate leaders through creative and relevant professional experiences.



# WHO IS AT SABIN-SCELLENBERG?



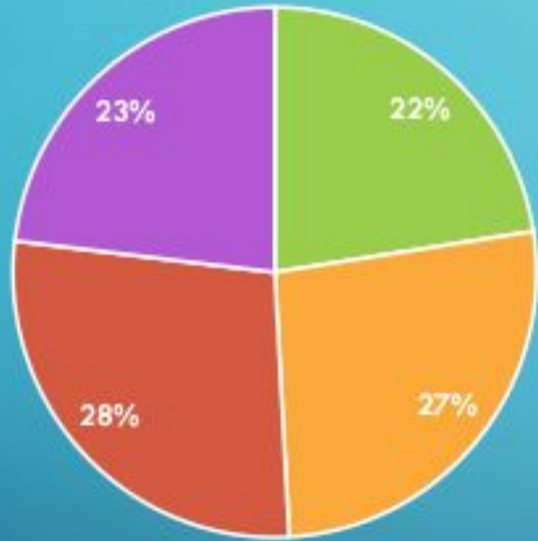
- White
- Asian
- Black
- Native

- Hispanic
- Multi-Racial
- Pacific Islander

- Male
- Female
- Non-Binary

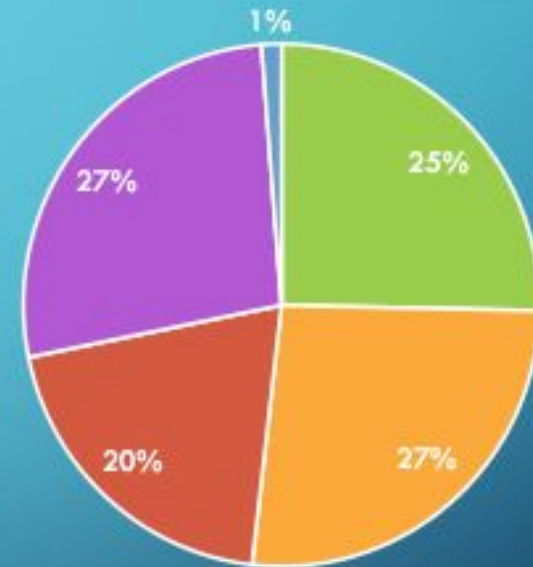
# WHO IS AT SABIN-SHELLENBERG?

## Grade



■ 9th ■ 10th ■ 11th ■ 12th

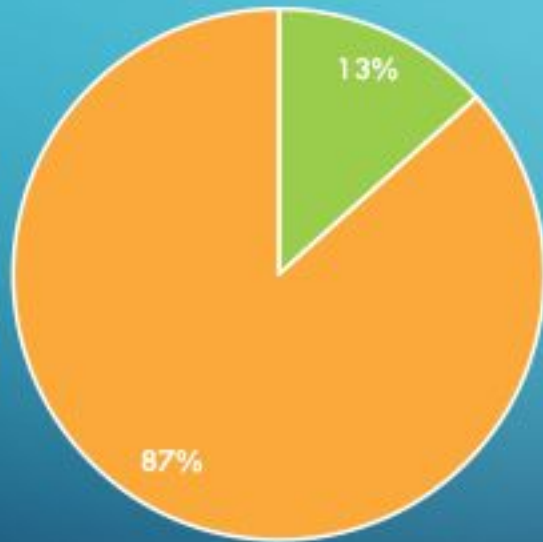
## Home High School



■ Milwaukie ■ Clackamas  
■ Putnam ■ Nelson  
■ New Urban

# WHO IS AT SABIN SCHELLENBERG?

## Students Receiving Special Education Supports



■ Yes ■ No

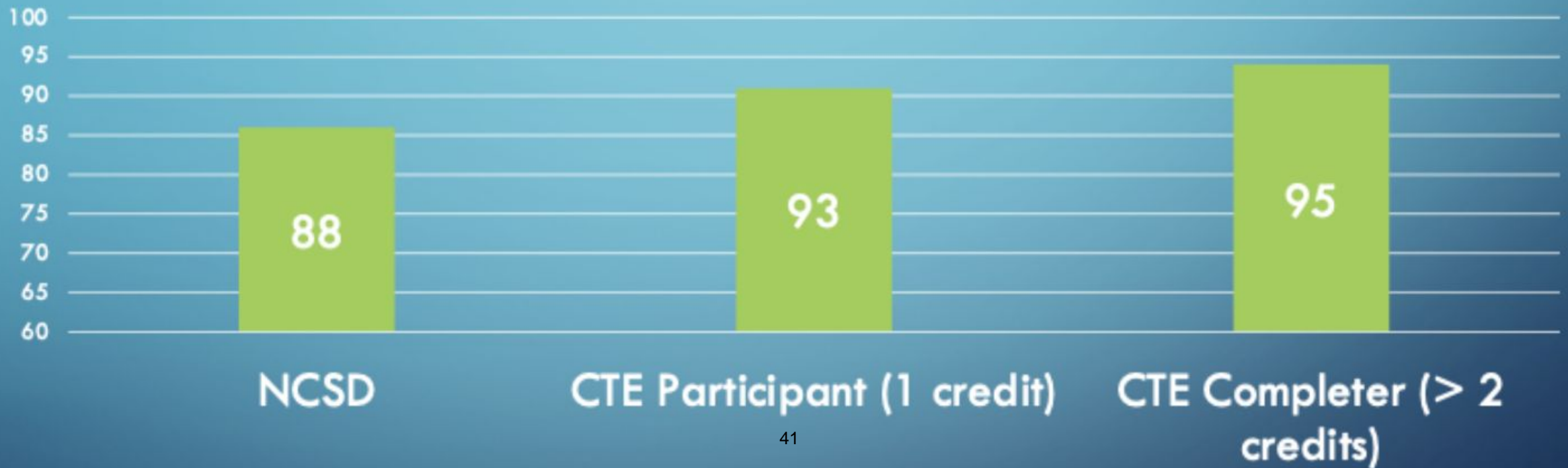
## Students Receiving English Language Supports



■ Yes ■ No

# TAKING CAREER & TECHNICAL EDUCATION (CTE) COURSES MATTER

## Graduation Rate 22/23



# REAL LIFE WORK EXPERIENCE FOR STUDENTS

## CAREER AND TECHNICAL STUDENT ORGANIZATIONS:

- DECA
- SKILLS USA
- FFA
- Future Natural Resources Leaders
- Vex Robotics

## WORK BASED LEARNING:

- Student Based Enterprises (Deli, BizMart)
- Cosmetology Client and Guest Day
- Industry Partner Visits
- Internships



# COLLEGE ARTICULATION

We articulate with: Clackamas Community College, Portland Community College, Linn-Benton Community College, Mt. Hood Community College and Lane Community College

- Last year 1189 students earned 1957 advanced college credits
- Students saved \$226,839.30 on those credits





# COMMUNITY TOURS

Interest has been high in learning more about our programs

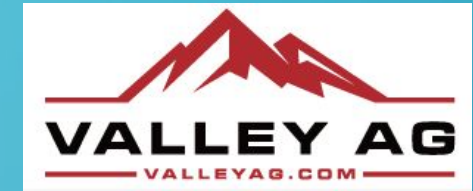
Tours happen every 2<sup>nd</sup> Monday of the month from 6:00-7:30 pm

We hosted a Spanish Language Tour on our Showcase Night

# WE ARE PARTNERING WITH OUR COMMUNITY TO PLAN FOR THE FUTURE

SSC is engaged in in developing 5 -10 year plans for some of our programs:

- Automotive
- Electronics Technology
- Agriculture
- Forestry
- Education
- Broadcasting and Journalism



# RECRUITING NEW TEACHERS

We have re-established the Career and Technical Educator (CTE) Apprenticeship Program with Clackamas Community College, originally established prior to the pandemic.

- We were able to create two apprenticeship positions: Automotive and Business and Marketing



# RETAINING OUR CURRENT TEACHERS

We have dedicated resources to support the onboarding of teachers in their first three years:

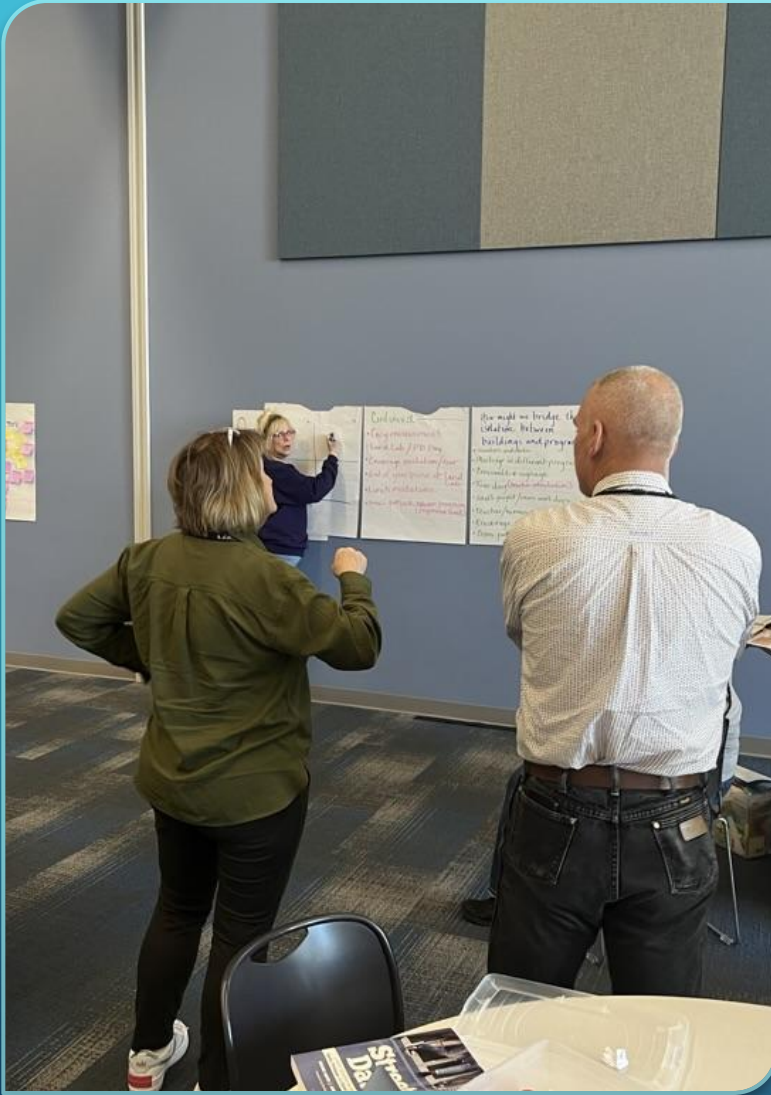
- In addition other district efforts to support new teachers, we are meeting monthly to support our teachers in the unique demands of being a CTE teacher.
- Support with CTE specific tasks such as Managing Budgets, Advisory Board Meetings and Industry Partnerships



# SCHOOL IMPROVEMENT WORK

Our work this year focuses on three major areas:

1. Ensuring that there are adequate feedback loops in place
2. Improving the success of students receiving Special Education and English Language supports
3. Removing barriers and expanding options for entering our Programs of Study



# FEEDBACK LOOPS

Our student leadership team, comprised of a teacher leader from each Professional Learning Community (PLC), has been receiving job embedded PD in collaboration with an outside consultant. Professional Development days have explored how to establish a community that allows staff to get authentic feedback from students. This feedback is driving instruction and improving student experiences.





## FEEDBACK LOOP HIGHLIGHT

We are currently on a listening tour at each of the four comprehensive high schools, listening to students who have dropped classes after the drop deadline. We are also creating data systems around these students to implement changes that will disrupt exclusionary practices.<sup>50</sup>

# PROMOTING SUCCESS FOR OUR STUDENTS RECEIVING SUPPORT

- Working to establish appropriate communication channels with district staff providing support
- New Career and Technical Education Counselor communicates between SSC and home high schools
- Staff regularly monitor grade data
- Built-in time for staff to attend meetings
- Teachers collaborate about effective strategies to support students



# EXPANDING OPPORTUNITY

We are...

- Displaying Career Tree posters across all programs to make the potential career pathways visible to students
- Digging into forecasting data with counselors to see where we can get better representation in programs of study
- Providing differentiated tours for underserved populations



# SIMPLIFYING PATHWAYS INTO OUR PROGRAMS OF STUDY

New single period classes that provide an entry ramp into programs of study:

- Survey of Agriculture and Natural Resources
- Careers in Education (K-12)
- Careers in Early Childhood (Birth to Age 5)
- Machining 1 & Welding 1  
(Previously Manufacturing 1)



# QUESTIONS



## **SCIENCE ADOPTION GRADES K-12**

**DISCUSSION**  
Agenda Item #3  
May 23, 2024

### **SUPERINTENDENT'S RECOMMENDATION:**

This data is presented for Board information, discussion, and eventual adoption of science materials for grades K-12.

### **GOAL OF THE NCS D SCIENCE PROGRAM:**

Provide equitable access to Next Generation Science Standards and inspire underrepresented students to pursue advanced science courses and careers.

### **SCIENCE CURRICULUM ADOPTION GOALS:**

Strengthen and improve instructional and assessment practices that lead to each student's meaningful academic and experiential learning.

### **SCIENCE CURRICULUM ADOPTION OBJECTIVES:**

- common courses and pathways that promote teacher collaboration and allow for equal access to rigorous science learning
- common instructional materials and equipment to support equal access to rigorous science learning
- common hands-on experiences that allow for equitable access to make sense of scientific ideas

### **BACKGROUND**

- The last elementary science adoption process took place in 2015-2016 with grades 3-5 implementing in 2016-2017 and grades 1-2 in 2017-2018.
- The last middle school science adoption process took place in 2016-2017 with implementation in 2017-2018.
- The high school adoption process took place in 2016-2017. Patterns Physics as implemented in 2018-2019, Patterns Chemistry in 2019-2020, and Patterns Biology in 2020-2021.

### **BUDGET IMPACT/SOURCE OF FUNDS:**

Funds for the purchase of K-12 science adoption resources are included in the Teaching, Learning, and Professional Development Department Budget.

### **ADOPTION PROCESS:**

Curriculum materials are evaluated based on their alignment with current standards and the Oregon Department of Education's Instructional Materials Evaluation Tool rubric.

## **Teacher Involvement:**

### K-5

- Four instructional coaches and administrators reviewed ODE approved instructional materials list and narrowed down the list.
- 26 teachers, specialists, and administrators reviewed selected materials (Collaborate Science and FOSS Pathways)

### Middle School

- Three instructional coaches and administrators reviewed ODE approved instructional materials list and narrowed down the list.
- 21 teachers, specialists, and administrators reviewed instructional materials (OpenSciEd, Twig Science, and FOSS Next Generation) and recommended piloting OpenSciEd.
- Five 6th grade teachers piloted an OpenSciEd unit, 2 7th grade teachers piloted an OpenSciEd unit, and 3 8th grade teachers piloted an OpenSciEd unit.

### 9-12

- Three instructional coaches and administrators reviewed ODE approved instructional materials list and narrowed down the list.
- 21 teachers, specialists, and administrators reviewed instructional materials (Patterns, OpenSciEd, Savvas, and STEMscopes). OpenSciEd and Savvas were recommended for the pilot.
- Eight teachers piloted an OpenSciEd unit, and three teachers piloted a Savvas unit.

## **Student Feedback:**

- 40 students from 4 elementary schools were interviewed.
- 26 students from all 4 middle schools participated in focus groups.
- 34 students from all 5 high schools participated in focus groups.

**Parent Feedback** was collected through an online survey.

## **PRESENTER / STAFF CONTACTS:**

Tammy O'Neill, Executive Director of Teaching and Learning & Professional Development

Laurie Meisner, Associate Director of Teaching & Learning & Professional Development

Meagan Sternberg, Instructional Coach, Science and Health

# K-12 SCIENCE ADOPTION

May 23, 2024



# OAR 581-022-2355

## Division 22

As stated in Section (1) of the rule: “For each program and course in grades K-12, each school district, on a cycle established by the State Board of Education, shall select and provide students with free appropriate instructional and resource materials. These materials shall contribute to the attainment of the district, program, and course or grade level goals and reflect recent knowledge, trends, and technology in the field.”



## Our Mission

Inspiring graduates who are empowered to act with courage in life and to strengthen local and global communities

Strengthen and improve **instructional** and **assessment practices** that lead to meaningful academic and experiential learning for each student.

## Equity Focus

North Clackamas School District is committed to examining and improving our system by affirming students' many identities while building inclusive, barrier free schools and workplaces.

# NCSD SCIENCE VALUES

- common **courses** and **pathways** that promote teacher collaboration and allow for equal access to rigorous science learning
- common **instructional materials** and **equipment** to support equal access to rigorous science learning
- common **hands-on experiences** that allow for equitable access to make sense of science ideas

# K-5 SCIENCE PROGRAMS

Students receive science instruction for 30-45 minutes through life, earth, and physical science units.

Teachers have access to physical and digital materials to support instruction.

English Language services are integrated into all science instruction.



# 6-8 SCIENCE PROGRAMS



Students receive science instruction every day for 70 minutes through life, earth, and physical science units.

Teachers have access to physical and digital materials to support instruction.

Teachers receive monthly professional learning.

# 9-12 SCIENCE PROGRAMS



Students receive science instruction for 87 minutes every other day.

Students must receive 3 science credits to graduate.

Schools offer common NGSS courses to all students, as well as, advanced courses.

Teachers have access to physical and digital resources to support instruction.

Teachers receive monthly professional learning.

# HIGH QUALITY MATERIALS

“A growing and compelling research base suggests that high-quality instructional materials can yield improvements in student learning outcomes equal to or greater than many interventions that are often more costly. (High quality instructional materials) are about bringing equity to the district - a shared experience creating a floor, but not a ceiling, around the teaching and learning that happens in our classrooms.”

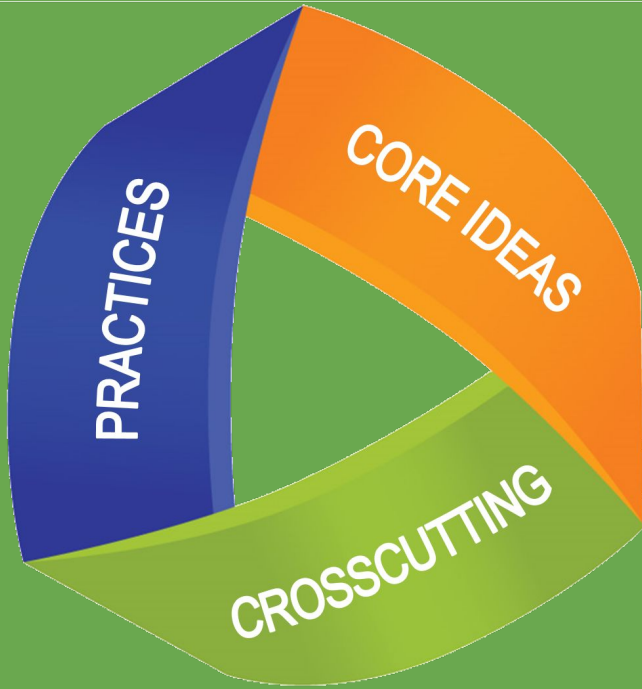
# ADOPTION OPTIONS

## OAR 581-022-2355

purchase from  
ODE's list of  
approved  
materials

conduct an  
independent  
adoption

# NCSD SCIENCE GOALS



The goal of the North Clackamas Science Program is to provide equitable access to learn Next Generation Science Standards and inspire underrepresented students to pursue advanced science courses and careers.

# K-5 NCSD FEEDBACK

"Science journals help me keep track of my learning."

**Riverside student**

"Hands-on activities help me remember and it's fun."

**Mt Scott student**

"In science I learn best when I am in a group of people."

**Duncan student**

# 6-8 NCSD FEEDBACK

"Working together in community" makes me feel successful.

**RMS student**

"I like to do hands-on" activities.

**ACMS student**

"I'd rather do more paper ... stuff."

**RCMS student**

# 9-12 NCSD FEEDBACK

“I like solving a problem with a group.”

**MAA student**

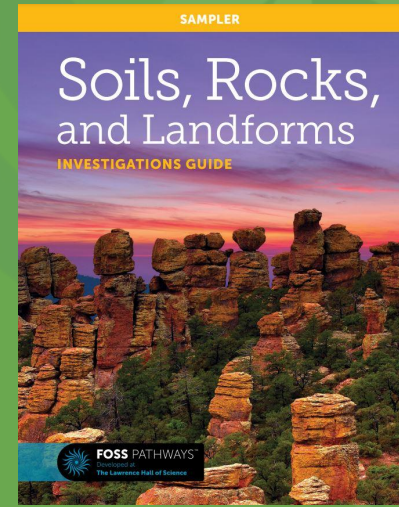
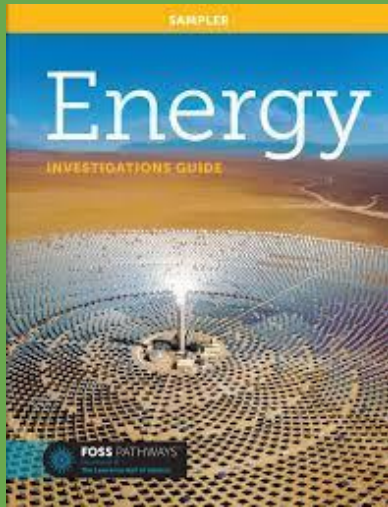
“Hands-on experiences make it encouraging.”

**CHS student**

“I like when the teacher is passionate and helps students.”

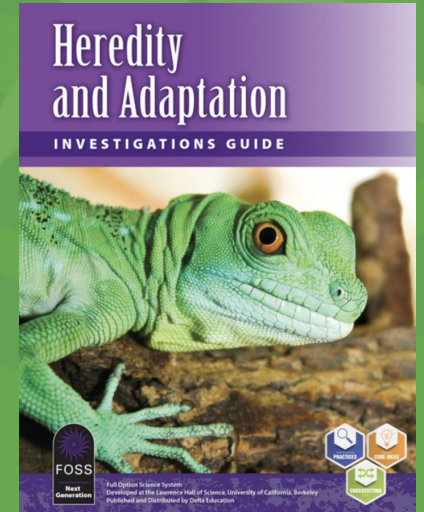
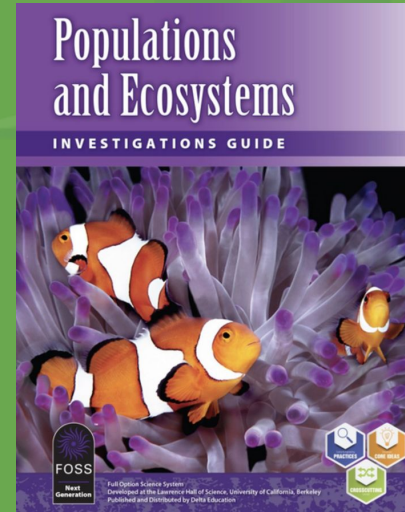
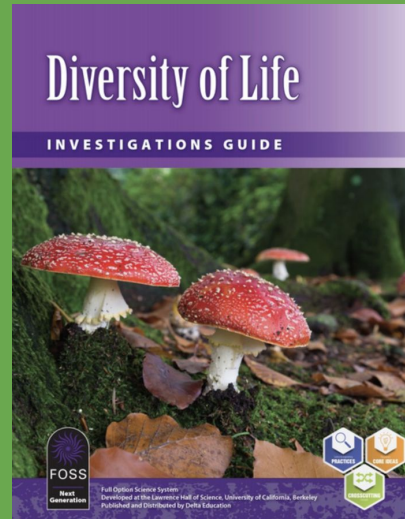
**ANHS student**

# K-5 INSTRUCTIONAL MATERIALS



21 teachers, specialists, and administrators provided feedback.

# 6-8 INSTRUCTIONAL MATERIALS

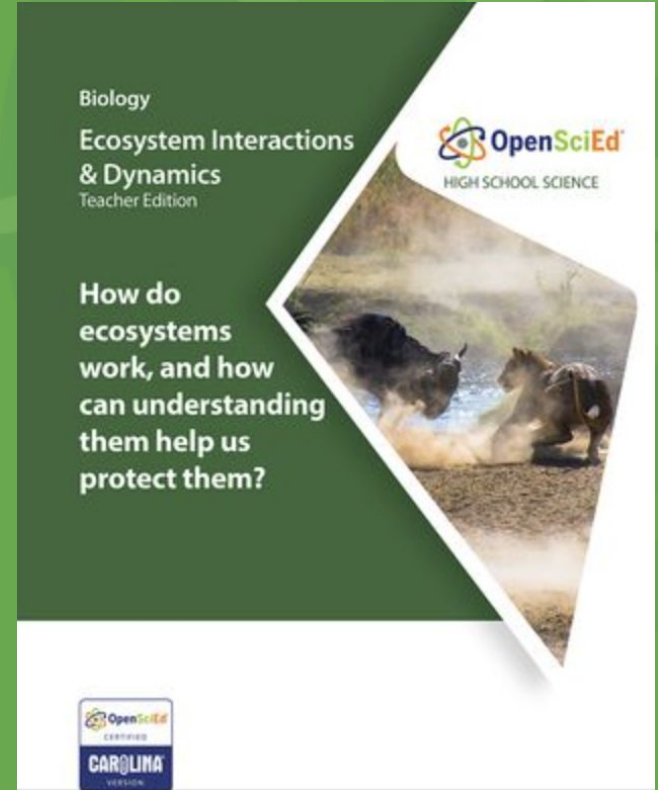


34 racial, linguistic, and gender diverse students from all five high schools

# 9-12 INSTRUCTIONAL MATERIALS



72



21 teachers, specialists, and administrators provided feedback.

# PROFESSIONAL LEARNING

**FULL DAY  
WORKSHOPS**

**REGULAR  
DISTRICT  
MEETINGS**

**MATERIALS  
SUPPORT**

**COACHING  
SUPPORT**

# QUESTIONS

What questions  
do you have  
about science  
instructional  
materials?



## **NUTRITION SERVICES**

**REPORT**  
Agenda Item #4  
May 23, 2024

### **ORIGINATED BY:**

This is an annual informational update presented to the School Board.

### **BACKGROUND:**

#### ***Nutrition Services Report:***

The North Clackamas School District partners with Chartwells to provide a robust Nutrition Services Program. Each year staff reviews the services provided and the overall health of the full Nutrition Services Program.

This time is set aside for an update to the School Board on the status of the Nutrition Services Program, including these features:

- Nutrition Services Overview
- Innovative Programs
- Student Voice
- Average Meal Counts
- Community Eligibility Provision Expansion

#### ***School Meal Fees:***

Per Policy EFAA-AR, “Annually, the district will establish prices for reimbursable student meals, afterschool snacks and milk. The price charged to students who do not qualify for free or reduced-price meals will be established by the district in compliance with state and federal laws.”

The district anticipates that all schools currently serving breakfast and lunch will fall under the Community Eligibility Provision (CEP) in 2024-25 and students will receive one breakfast and one lunch at no cost to the student each day. However, it is incumbent on the district to establish meal prices for the rare, or unforeseen, circumstances under which they might be needed. Consequently, the district will carry forward the current price of meals and milk in the event they are needed, and the district will not seek a price modification from the Board at this time.

### **PRESENTER/STAFF CONTACT:**

Matthew J. Makara, Executive Director of Finance and Business Services  
Greg Collins, Director of Nutrition Services



# North Clackamas School District

## Nutrition Services Board Presentation

May 2024

# On The Agenda

Serving Up Happy & Healthy

Meet Our Team

Nutrition Program Overview

Student Focused Programs

Results

Average Daily Counts SY 2023/24

Meal Counts Year over Year

Looking Forward

Expanding the Community Eligibility Program

Questions





# Serving up Happy & Healthy

# Chartwells Team



**Greg Collins**  
Operations Manager  
Serving Up Happy &  
Healthy for 9 Years



**Israel Laureles**  
Director of Dining Services  
Serving Up Happy &  
Healthy for 7 Years



**Kris DeHut**  
Culinary Manager  
Serving Up Happy &  
Healthy for 6 Years

Welcome  
Raimi!



**Raimi Kaan**  
Production Manager  
Serving Up Happy &  
Healthy for 9 months



**Amy Ramsey**  
Administrative Assistant  
Serving Up Happy &  
Healthy for 17 Years



**Paula Presley**  
Administrative Assistant  
Serving Up Happy &  
Healthy for 8 Years



**110 Nutrition Services Team Members • 130 Paraeducators • Courier Team  
Serving 29 Schools**

# Nutrition Services - Program Overview

Nutrition Services runs five programs under the oversight of the United States Department of Agriculture (USDA) and the Oregon Department of Education (ODE).

- School Breakfast Program (SBP)
- National School Lunch Program (NSLP)
- Child and Adult Care Feeding Program (CACFP)
- Summer Food Service Program (SFSP)
- Seamless Summer Program (SSP)

Enhancements to the above programs include:

- Breakfast After the Bell (BAB)
- Breakfast in the Classroom (BIC)
- Fresh Fruit and Vegetable Program (FFVP)
- Community Eligibility Program (CEP)



# Nutrition Services - Program Standards

School Nutrition Programs are highly regulated. All products served must meet strict criteria to be part of a reimbursable meal.

Government regulations include guidelines for:

- minimum and maximum calories
- portion sizes
- sodium limits
- sugar limits
- required meal components
- required vegetable subgroups
- whole grain requirements
- milk variety requirements
- smart snack standards
- competitive sales regulations



# Discovery KITCHEN

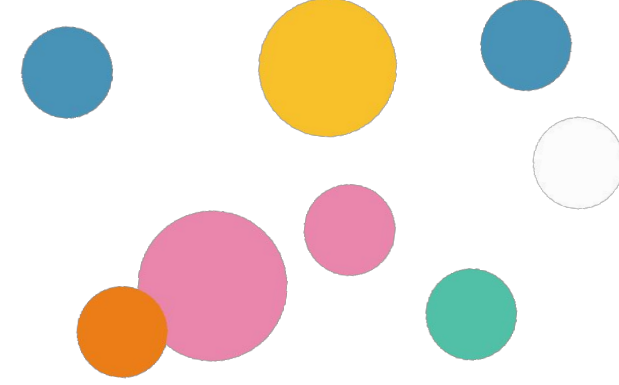
Each month, Discovery Kitchen lessons, events, and culinary demonstrations feature a different theme.

These themes are designed to inspire curiosity and discovery in North Clackamas School District students and the school community.

<b>August</b>	<b>Bring on Breakfast</b> Add excitement to the beginning of the school day		<b>September</b>	<b>Performance Nutrition</b> Learn how food can fuel us to perform our best	
<b>October</b>	<b>Seed to Table</b> A celebration of fresh, seasonal and local foods		<b>November</b>	<b>Let's Get Cooking</b> Empower kids to cook at home with homemade classics	
<b>December</b>	<b>Spice it Up</b> Learn how global flavors season foods without salt		<b>January</b>	<b>Roadtrip</b> Take a culinary adventure through the USA	
<b>February</b>	<b>Smart Snacking</b> Create mini, balanced meals with "snack" foods		<b>March</b>	<b>Plant Power</b> Learn about tasty plant-based proteins	
<b>April</b>	<b>Be a Waste Warrior</b> Learn how we all play a part in reducing waste		<b>May</b>	<b>Summer Fun</b> Get ready for summer with seasonal favorites	



# chartwells Discovery KITCHEN



# MOOD BOOST

Featuring One  
Character  
Monthly at  
Elementary  
Schools



**STRONG**



**ALERT**



**HAPPY**

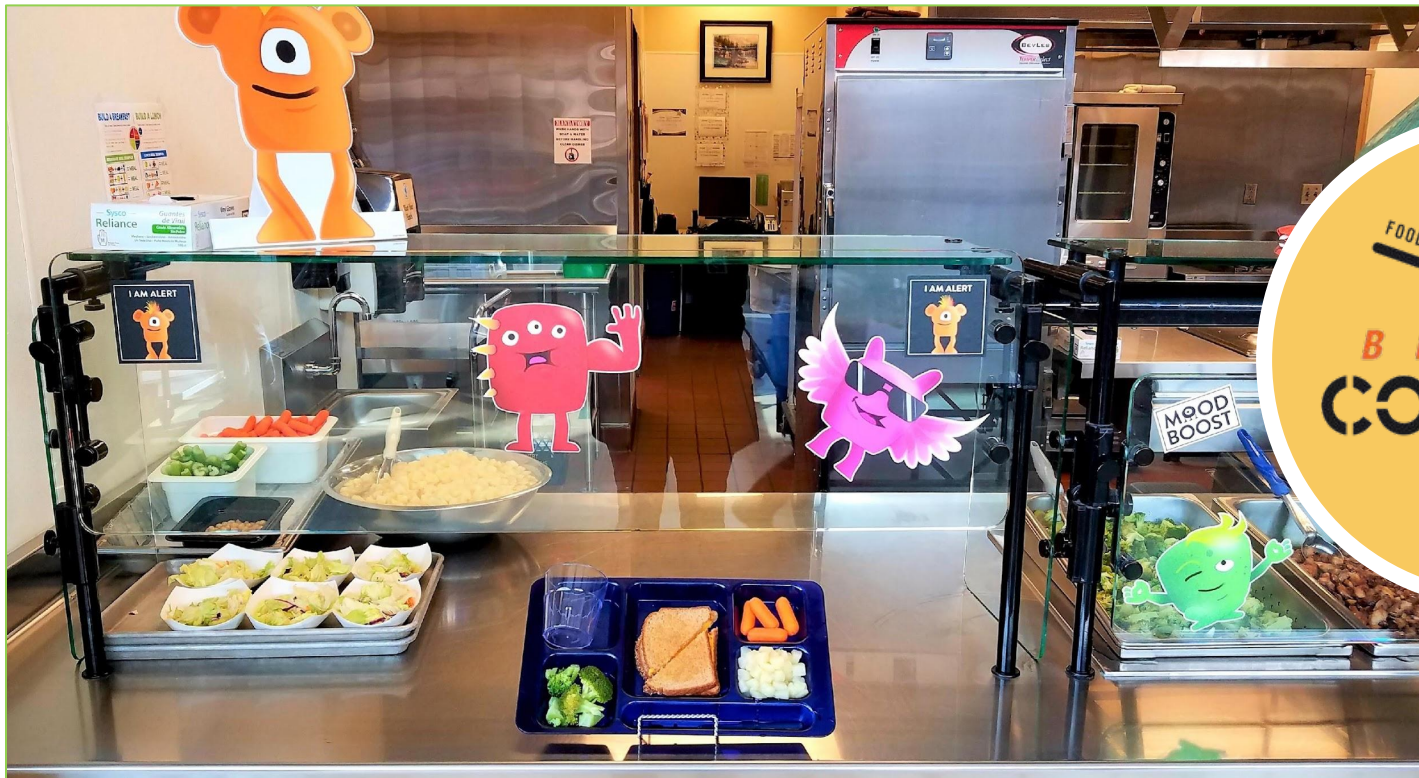


**CALM**



**CONFIDENT**

...a fun and engaging new program to help students connect the foods they eat with how they feel!



# MOOD BOOST

Offered at all elementary schools



# STUDENT CHOICE

FOOD YOUR WAY

# STUDENT CHOICE

FOOD YOUR WAY



# STUDENT CHOICE

Available at all secondary schools



South West Potato Tostado

-VERSUS-

**BIG CITY BARBEQUE**

STUDENT CHOICE winner

EVERY WEDNESDAY IN FEBRUARY

<b>FEB 1st</b>	<b>CARIBBEAN BBQ PORK SLIDERS</b> Served with Cilantro Lime Coleslaw
<b>FEB 8th</b>	<b>ASIAN GINGER BBQ PORK SANDWICH</b> Asian Ginger BBQ Sauce Served with Cilantro Lime Coleslaw
<b>FEB 15th</b>	<b>CHIPOTLE CITRUS BBQ PORK SANDWICH</b> Served with Cilantro Lime Coleslaw
<b>FEB 22nd</b>	<b>HONEY MUSTARD BBQ PORK SANDWICH</b> Served with Cilantro Lime Coleslaw



Caribbean Pulled Pork Sliders



# Results

# Average Daily Meal Counts SY 2023/24

## Breakfast

1,549 -- Free Meals  
47 -- Reduced Meals  
200 -- Paid Meals

## Lunch

4,772 -- Free Meals  
338 -- Reduced Meals  
2,240 -- Paid Meals

## Dinner

184 – Free Meals

## Average Daily A la Carte Sales

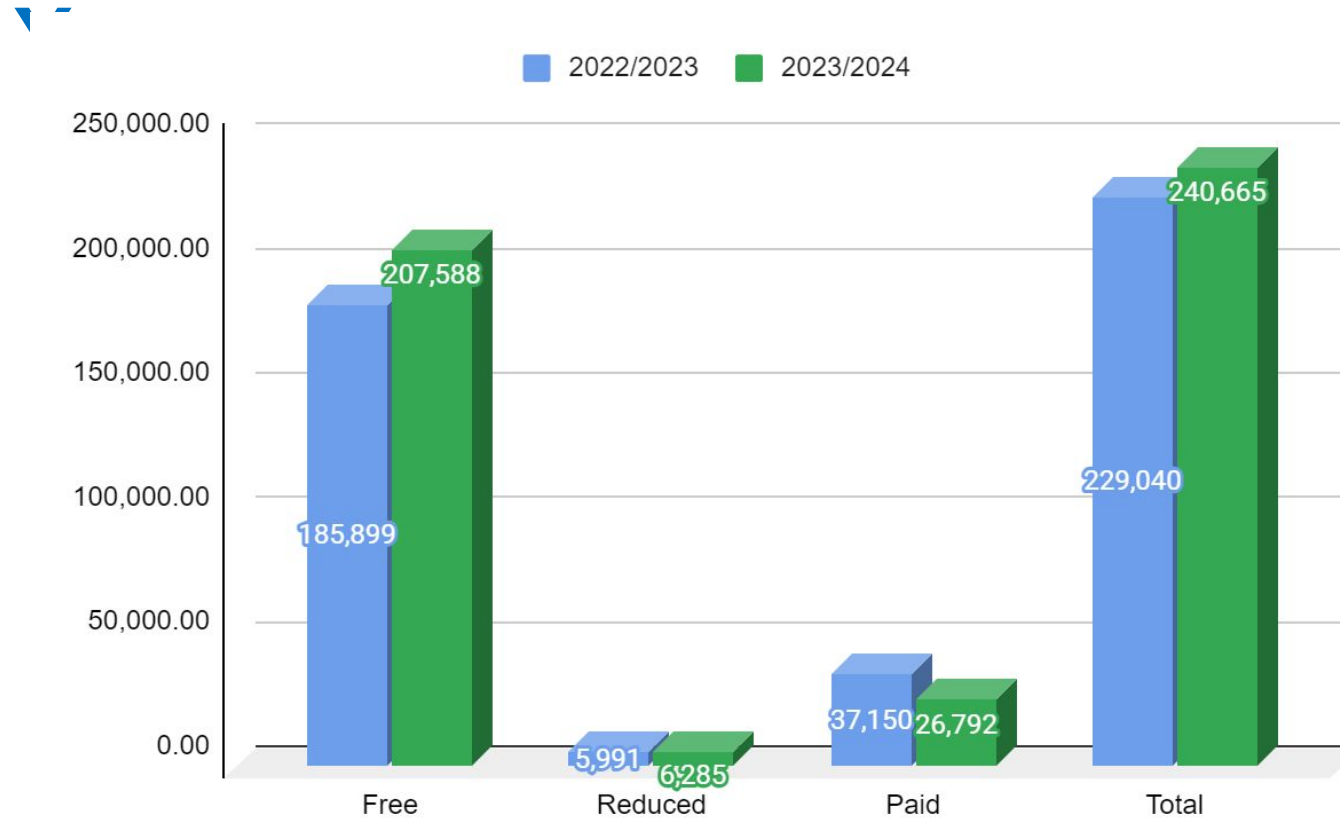
## A la Carte

\$3,207

## What is driving our program?

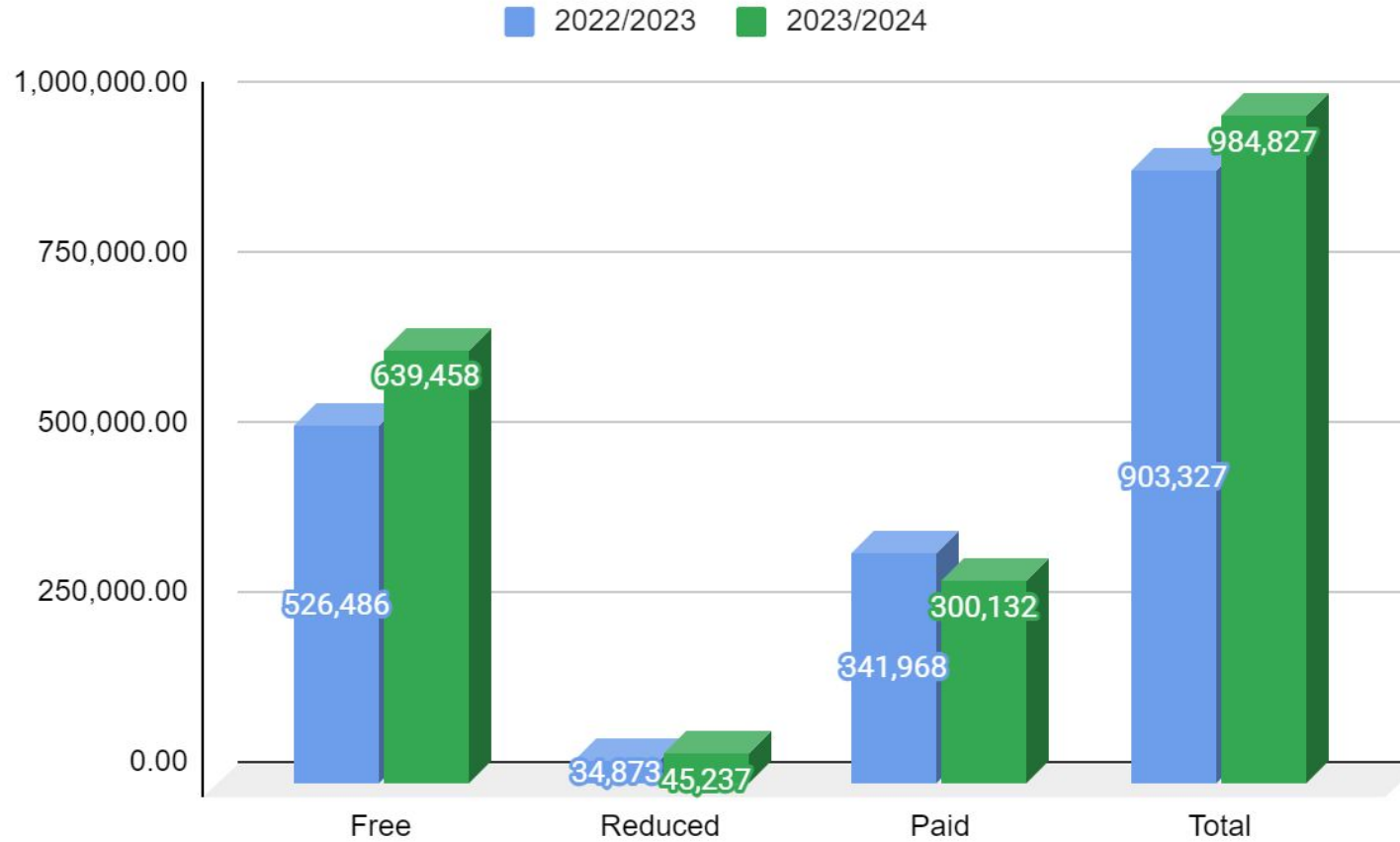
- Offering a large variety of popular menu items
- Empowering team members to provide excellent customer service
- Welcoming environments
- Strong support from district administrators
- Innovative programs that enhance student experience
- Community Eligibility Program

# Breakfast Counts – Year Over



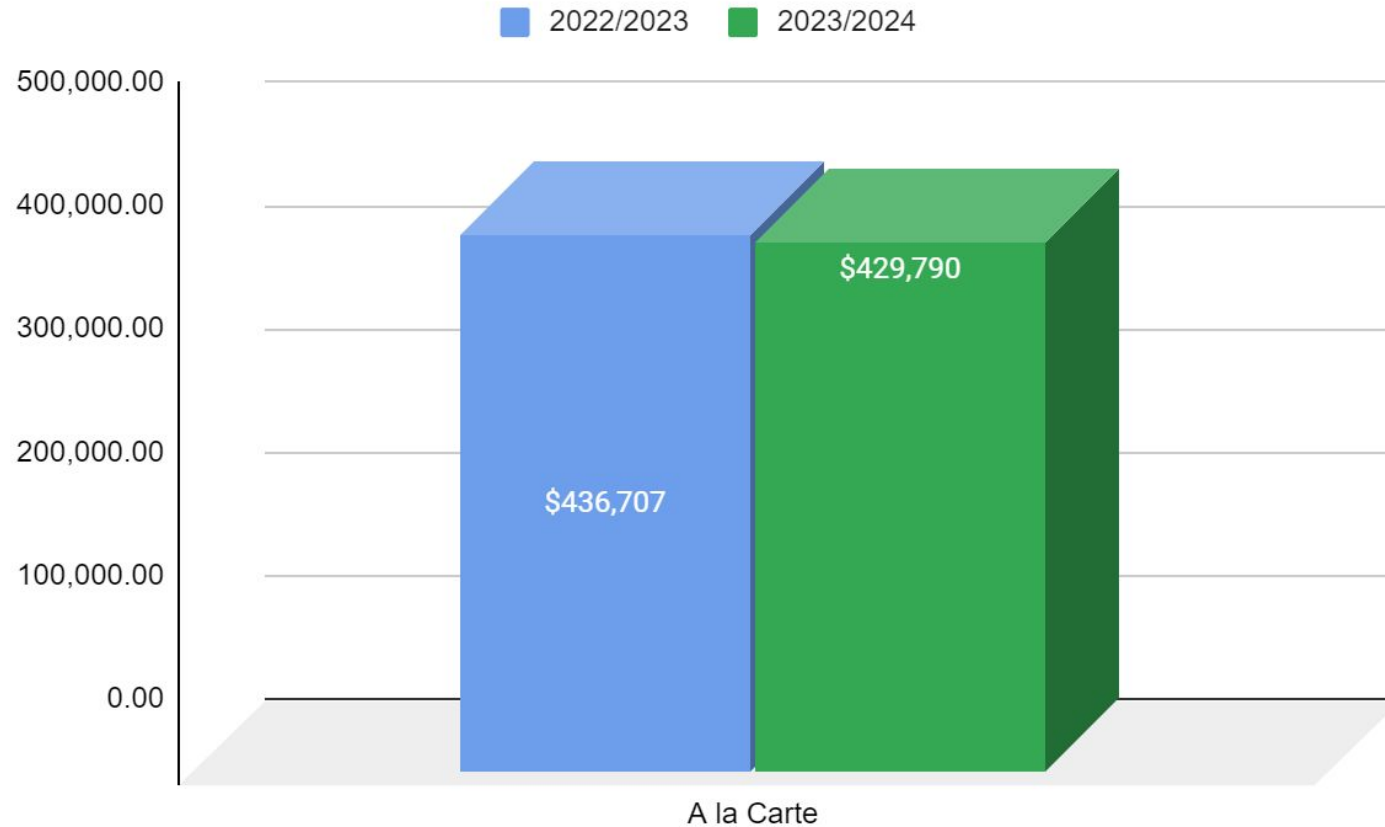
Counts based on 135 days in school year 2022/2023  
Counts based on 134 days in school year 2023/2024

# Lunch Counts – Year Over Year



Counts based on 135 days in school year 2022/2023  
Counts based on 134 days in school year 2023/2024

# A la Carte – Year Over



Counts based on 135 days in school year 2022/2023  
Counts based on 134 days in school year 2023/2024



# Looking Forward



# Community Eligibility Provision (CEP)

The Community Eligibility Provision (CEP) allows districts and schools in income-eligible areas to provide school lunch and breakfast at no charge to all students.

Schools and districts enrolled in CEP are required to:

- Serve breakfast and lunch at no charge to all students
- Agree to cover the cost of providing free meals to all students, above the amount provided by federal and state reimbursement, with non-federal funds if needed to keep a positive balance in the non-profit school food service fund.
- Reapply for continued CEP benefits every four years. However, CEP can be stopped at any time.

Additional benefits to increased access to school meals includes:

- **Increased Meal Participation and Reimbursements:** Meals at no cost will lead to higher participation rates and better financial stability for the nutrition program.
- **Reduced Stigma:** Children are not subject to the peer-group stigma sometimes associated with receiving free or reduced-price meals.
- **Reduced Paperwork for Families:** CEP eliminates the need for free and reduced meal applications.
- **Reduced Food Insecurity:** CEP helps ensure no student goes hungry during the school day, promoting a healthier learning environment.
- **Improved Academic Outcomes:** Access to nutritious meals positively impacts academic performance.



# CEP- District Wide Adoption

As a result of revised federal CEP guidelines and state reimbursement thresholds, starting in school year 2024/2025 **all** NCSD schools will offer breakfast and lunch at no charge to all students!



Plans are being developed for school district-wide communication, and work is underway to identify operational support that will be needed in schools to successfully roll out CEP.



# Looking Forward

## 1

- Focus on increasing participation utilizing Student Choice, Mood Boost, and Discovery Kitchen events.

## 2

- Prepare for the opportunity to adopt the Community Eligibility Provision district-wide<sup>97</sup>

## 3

- Continue recruiting and retaining the best team members, and celebrating their commitment to our students.



**Thank you!**

## **REVISED PUBLIC CONTRACTING RULES**

## **DISCUSSION**

Agenda Item #5

May 23, 2024

### **SUPERINTENDENT’S RECOMMENDATION:**

Adopt resolution amending the District’s Public Contracting Rules to address statutory and administrative rules changes.

### **BACKGROUND:**

Purchasing and contracting at North Clackamas School District are governed by the NCS D Public Contracting Rules (“Rules”) adopted by the School Board in addition to state Public Contracting Code (ORS 279A, 279B, and 279C.) Oregon public entities are subject to the Attorney General’s Model Rules unless the Local Contract Review Board (the School Board serves as the Local Contract Review Board at North Clackamas School District), elects to adopt its own rules. Many larger school districts adopt their own rules to address the unique procurement issues in schools that are not addressed in the Attorney General’s Model Rules.

North Clackamas School District first adopted its own Rules in January of 2007. Since that time, the Rules have been updated in 2010 and 2016 to reflect changes to the state statutes and Attorney General’s Model Rules.

The NCS D Public Contracting Rules provide rules of procedure related to the public contracting statutes and direction from the Board where the Board has discretion. In some areas, such as procurement thresholds and the process for formal procurements, the Board has limited discretion and in others areas, such as contracting for professional services or what contracts are reviewed by the Board, the Board has substantial discretion.

### **PROPOSED CHANGES:**

The Oregon State Legislature has adopted changes since the current NCS D rules were adopted. The Attorney General’s Model Rules have been updated to reflect these changes to state law and these serve as the basis for NCS D’s new proposed rules. The proposed changes provide an opportunity to modernize the rules and update them to reflect current practice and changes in the Public Contracting Code since 2016.

The development of the proposed 2024 NCS D Rules included:

- Review of the current Attorney General’s Model Rules
- Review of public contracting rules from other jurisdictions
- Sought user feedback from a wide group of internal users including more than 20 focus interviews
- Consultation with legal counsel

Proposed changes include minor updates to names and terms used by the state, various clerical corrections and the following substantial content changes:

- Increase thresholds at which certain processes are required
- Implement new rules for retainage related to Public Improvement Projects

- Requirement, where feasible, to seek at least one quote from a woman-owned, veteran-owned, or minority-owned business
- Recognize change to state definition of disadvantaged business to include veteran-owned businesses
- Implement new price evaluation rules for the selection of architects and engineers

<b>Current</b> Thresholds	Small	Intermediate	Formal
Goods and Trade Services	< \$10,000	\$10,000 - \$150,000	> \$150,000
Personal Services	< \$50,000	\$50,000 - \$150,000	> \$150,000
Architect, Engineers & Related Services (A/E)	< \$100,000	\$100,000-\$250,000	> \$250,000
Public Improvement	< \$5,000	\$5,000 - \$100,000	> \$100,000

<b>Proposed</b> Thresholds	Small	Intermediate	Formal
Goods and Trade Services	< \$25,000	\$25,000- \$250,000	> \$250,000
Personal Services	< \$75,000	\$75,000- \$250,000	> \$250,000
Architect, Engineers & Related Services (A/E)	< \$100,000	\$100,000-\$250,000	> \$250,000
Public Improvement	< \$25,000	\$25,000-\$100,000	> \$100,000

The current thresholds reflect the state maximums at the time of their adoption. The proposed thresholds reflect the current state maximums with the exception of Personal Services where the state leaves thresholds entirely to the School Board’s discretion. To arrive at the proposed Personal Service threshold staff used historical inflation data to modify the previous threshold to today’s equivalent amount.

Adoption of amended 2024 NCSD Public Contracting Rules is by Resolution. The proposed Resolution is attached.

**ATTACHMENTS:**

Proposed 2024 NCSD Public Contracting Rules

[Presentation Slides](#)

[Proposed Resolution](#) adopting amended 2024 NCSD Public Contracting Rules

[Board Policy DJC – Bidding Requirements](#)

**PRESENTER / STAFF CONTACT:**

Matt Makara, Executive Director of Finance and Business Services

Gwen Chapman, Director of Business Operations

Megan Jelley, Senior Purchasing Specialist



**NORTH CLACKAMAS SCHOOL  
DISTRICT NO. 12**

**PUBLIC CONTRACTING RULES**

**2024**

**TABLE OF CONTENTS**

**NCSD DIVISION 45..... 7**

**DISTRICT CONTRACTS GENERALLY ..... 7**

NCSD-45-0000 Generally ..... 7

NCSD-45-0100 Definitions..... 7

NCSD-45-0200 Authority to Approve District Contracts; Delegation of Authority to Superintendent..... 7

NCSD-45-0405 Oregon Forward Definitions ..... 8

NCSD-45-0410 Required Procurement of OFC Products or Services ..... 8

NCSD-45-0500 Contract Extensions ..... 8

**NCSD DIVISION 46..... 10**

**PUBLIC CONTRACTING RULES APPLICABLE TO ALL PUBLIC CONTRACTS AND PERSONAL SERVICES CONTRACTS ..... 10**

NCSD-46-0000 Generally ..... 10

NCSD-46-0100 Application; Federal Law Supremacy ..... 10

NCSD-46-0110 Definitions..... 10

NCSD-46-0120 Policy ..... 19

NCSD-46-0130 Application of the Code and Rules; Exceptions ..... 20

NCSD-46-0210 Subcontracting to and Contracting with Emerging Small Businesses; Disqualification ..... 21

NCSD-46-0300 Preference for Oregon Goods and Services; Nonresident Bidders ..... 23

NCSD-46-0310 Reciprocal Preferences..... 24

NCSD-46-0320 Preference for Recycled Materials..... 24

NCSD-46-0330 Solicitations and Specifications to Comply with School Board Environmental and Sustainability Policies. .... 25

NCSD-46-0400 Authority for Cooperative Procurements ..... 25

NCSD-46-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies ..... 25

NCSD-46-0420 Joint Cooperative Procurements ..... 26

NCSD-46-0430 Permissive Cooperative Procurements ..... 26

NCSD-46-0440 Required Public Notice if Permissive Cooperative Procurement is Over \$250,000 ..... 27

NCSD-46-0450 Interstate Cooperative Procurements ..... 28

NCSD-46-0460 Advertisements of Interstate Cooperative Procurements..... 28

NCSD-46-0470 Protest and Disputes; Cooperative Procurements ..... 29

NCSD-46-0480 Contract Amendments; Cooperative Procurements ..... 29

NCSD-46-0500 Personal Services Contract Definition ..... 29

NCSD-46-0505 Personal Service Contract Formal Selection Procedures..... 30

NCSD-46-0510 PSC Informal Selection Procedures..... 30

NCSD-46-0515 Other Approved Solicitation Methods ..... 31

NCSD-46-0520 Flexible Services Contractor Pool ..... 31

NCSD-46-0525 PSC Selection by Negotiation..... 32

NCSD-46-0530 PSC Contract Requirements ..... 33

**NCSD DIVISION 47..... 34**

North Clackamas School District Public Contracting Rules 2024

**PUBLIC CONTRACTING RULES FOR CONTRACTS FOR GOODS AND/OR SERVICES OTHER THAN PERSONAL SERVICES ..... 34**

NCSD-47-0000 Generally ..... 34

NCSD-47-0250 Methods of Source Selection ..... 34

NCSD-47-0252 Procurement of Service Contracts Over \$250,000 in Compliance with ORS 279B.030 through ORS 279B.036..... 34

NCSD-47-0255 Competitive Sealed Bidding; One-Step Solicitations ..... 39

NCSD-47-0257 Competitive Sealed Bidding; Multi-Step Solicitations ..... 41

NCSD-47-0260 Competitive Sealed Proposals; One-Step Solicitations ..... 42

NCSD-47-0261 Procedures for Competitive Range; Multi-Tiered and Multi-Step Solicitations ..... 46

NCSD-47-0265 Small Procurements ..... 50

NCSD-47-0270 Intermediate Procurements ..... 50

NCSD-47-0275 Sole-Source Procurements ..... 51

NCSD-47-0280 Emergency Procurements ..... 51

NCSD-47-0285 Special Procurements; Purpose and Application ..... 52

NCSD-47-0287 Special Procurements; Request Procedures ..... 52

NCSD-47-0288 Approved Class Special Procurements ..... 52

NCSD-47-0300 Public Notice of Solicitation Documents ..... 60

NCSD-47-0310 Bids or Proposals are Offers ..... 61

NCSD-47-0320 Facsimile Bids and Proposals ..... 62

NCSD-47-0330 E-Procurement ..... 63

NCSD-47-0400 Offer Preparation ..... 65

NCSD-47-0410 Offer Submission ..... 65

NCSD-47-0420 Pre-Offer Conferences ..... 65

NCSD-47-0430 Addenda to Solicitation Document ..... 66

NCSD-47-0440 Pre-Closing Modification or Withdrawal of Offers ..... 66

NCSD-47-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers ..... 67

NCSD-47-0460 Late Offers, Late Withdrawals, and Late Modifications ..... 67

NCSD-47-0470 Mistakes ..... 68

NCSD-47-0480 Time for District Acceptance ..... 69

NCSD-47-0490 Extension of Time for Acceptance of Offer ..... 69

NCSD-47-0500 Responsibility of Offerors ..... 69

NCSD-47-0525 Qualified Products Lists ..... 69

NCSD-47-0550 Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions ..... 70

NCSD-47-0560 Request for Qualifications ("RFQ") ..... 71

NCSD-47-0575 Debarment of Prospective Offerors ..... 72

NCSD-47-0600 Offer Evaluation and Award ..... 73

NCSD-47-0610 Notice of Intent to Award ..... 75

NCSD-47-0620 Documentation of Award ..... 76

NCSD-47-0630 Availability of Award Decisions ..... 76

NCSD-47-0640 Rejection of an Offer ..... 76

NCSD-47-0650 Rejection of All Offers ..... 78

NCSD-47-0660 Cancellation of Procurement or Solicitation ..... 78

NCSD-47-0670 Disposition of Offers if Solicitation Cancelled ..... 79

NCSD-47-0700 Protests and Judicial Review of Special Procurements ..... 79

**North Clackamas School District Public Contracting Rules 2024**

NCSD-47-0710	Protests and Judicial Review of Sole-Source Procurements.....	80
NCSD-47-0720	Protests and Judicial Review of Multi-Tiered and Multi-Step Solicitations.....	80
NCSD-47-0730	Protests and Judicial Review of Solicitations .....	81
NCSD-47-0740	Protests and Judicial Review of Contract Award .....	82
NCSD-47-0750	Judicial Review of Other Violations.....	82
NCSD-47-0760	Review of Prequalification and Debarment Decisions .....	83
NCSD-47-0800	Amendments to Goods or Services Contracts and Price Agreements .....	83
<b>DIVISION 48.....</b>		<b>85</b>
<b>CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING OR LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS.....</b>		<b>85</b>
NCSD-48-0100	Application.....	85
NCSD-48-0110	Definitions.....	85
NCSD-48-0120	List of Interested Consultants; Performance Record .....	86
NCSD-48-0130	Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest .....	87
NCSD-48-0200	Direct Appointment Procedure .....	91
NCSD-48-0210	Informal Selection Procedure .....	92
NCSD-48-0220	Formal Selection Procedure .....	96
NCSD-48-0230	Ties Among Proposers .....	104
NCSD-48-0240	Protest Procedures.....	105
NCSD-48-0250	Solicitation Cancellation, Delay, or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs.....	106
NCSD-48-0260	Two-Tiered Selection Procedure for District Public Improvement Projects .....	106
NCSD-48-0270	Price Agreements .....	107
NCSD-48-0280	FSCP .....	109
NCSD-48-0300	Prohibited Payment Methodology; Purchase Restrictions.....	110
NCSD-48-0310	Expired or Terminated Contracts; Reinstatement.....	111
NCSD-48-0320	Contract Amendments .....	111
<b>NCSD DIVISION 49.....</b>		<b>113</b>
<b>DISTRICT PUBLIC CONTRACTING RULES FOR CONTRACTS FOR PUBLIC IMPROVEMENTS AND/OR PUBLIC WORKS .....</b>		<b>113</b>
NCSD-49-0100	Application.....	113
NCSD-49-0110	Policies .....	113
NCSD-49-0120	Definitions.....	113
NCSD-49-0130	Competitive Bidding Requirement .....	113
NCSD-49-0140	Contracts for Construction Other Than Public Improvements .....	113
NCSD-49-0145	Exemptions From Competitive Bidding .....	114
NCSD-49-0146	Class Exemptions; Public Improvement Contracts.....	115
NCSD-49-0150	Emergency Contracts; Bidding and Bonding Exemptions .....	118
NCSD-49-0160	Intermediate Procurements; Competitive Quotes .....	118
NCSD-49-0200	Solicitation Documents; Required Provisions; Assignment.....	119

## North Clackamas School District Public Contracting Rules 2024

NCSD-49-0210	Notice and Advertising Requirements; Posting .....	122
NCSD-49-0220	Prequalification of Offerors .....	123
NCSD-49-0230	Eligibility to Bid or Propose; Registration or License .....	125
NCSD-49-0240	Pre-Offer Conferences .....	125
NCSD-49-0250	Addenda to Solicitation Documents .....	126
NCSD-49-0260	Request for Clarification or Change; Solicitation Protests .....	126
NCSD-49-0270	Cancellation of Solicitation Document .....	127
NCSD-49-0280	Offer Submissions.....	128
NCSD-49-0290	Bid or Proposal Security .....	129
NCSD-49-0300	Facsimile Bids and Proposals .....	129
NCSD-49-0310	Electronic Procurement.....	130
NCSD-49-0320	Pre-Closing Modification or Withdrawal of Offers.....	131
NCSD-49-0330	Receipt, Opening, and Recording of Offers; Confidentiality .....	131
NCSD-49-0340	Late Bids, Late Withdrawals, and Late Modifications .....	132
NCSD-49-0350	Mistakes .....	132
NCSD-49-0360	First-Tier Subcontractors; Disclosure and Substitution; ITB .....	133
NCSD-49-0370	Disqualification of Persons .....	135
NCSD-49-0380	Bid or Proposal Evaluation Criteria.....	137
NCSD-49-0390	Offer Evaluation and Award; Determination of Responsibility .....	138
NCSD-49-0395	Notice of Intent to Award .....	140
NCSD-49-0400	Documentation of Award; Availability of Award Decisions .....	140
NCSD-49-0410	Time for District Acceptance; Extension.....	141
NCSD-49-0420	Negotiation With Bidders Prohibited.....	141
NCSD-49-0430	Negotiation When Bids Exceed Cost Estimate.....	141
NCSD-49-0440	Rejection of Offers.....	142
NCSD-49-0450	Protest of Contractor Selection, Contract Award .....	143
NCSD-49-0460	Performance and Payment Security; Waiver .....	145
NCSD-49-0470	Substitute Contractor .....	145
NCSD-49-0490	Foreign Contractor .....	146
NCSD-49-0600	Alternative Contracting Methods; Purpose.....	146
NCSD-49-0610	Definitions for Alternative Contracting Methods .....	146
NCSD-49-0620	Use of Alternative Contracting Methods .....	148
NCSD-49-0630	Findings, Notice, and Hearing .....	149
NCSD-49-0640	Competitive Proposals; Procedure.....	151
NCSD-49-0645	Requests for Qualifications ("RFQ").....	152
NCSD-49-0650	Requests for Proposals ("RFP").....	153
NCSD-49-0660	RFP Pricing Mechanisms.....	157
NCSD-49-0670	Design-Build Contracts.....	157
NCSD-49-0680	Energy Savings Performance Contracts.....	158
NCSD-49-0690	Construction Manager/General Contractor Services .....	161
NCSD-49-0800	Required Contract Clauses.....	166
NCSD-49-0810	Waiver of Delay Damages against Public Policy .....	167
NCSD-49-0815	BOLI Public Works Bond.....	167
NCSD-49-0820	Retainage.....	167
NCSD-49-0830	Contractor Progress Payments .....	168
NCSD-49-0840	Interest.....	169
NCSD-49-0850	Final Inspection.....	169
NCSD-49-0860	Public Works Contracts .....	169

**North Clackamas School District Public Contracting Rules 2024**

NCSD-49-0870	Specifications; Brand Name Products .....	170
NCSD-49-0880	Records Maintenance; Right to Audit Records .....	171
NCSD-49-0890	District Payment for Unpaid Labor or Supplies .....	171
NCSD-49-0900	Contract Suspension; Termination Procedures .....	171
NCSD-49-0910	Public Improvement Contract Amendments and Changes .....	172

**North Clackamas School District Public Contracting Rules**  
Division 45 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**NCS D DIVISION 45**

**DISTRICT CONTRACTS GENERALLY**

**NCS D-45-0000 Generally**

Except as expressly provided in other School Board Policies, NCS D Divisions 45, 46, 47, 48, and 49 (collectively, the "North Clackamas School District Public Contracting Rules") govern all District Contracts. These Division 45 Rules address delegation of contracting authority under ORS 279A.075 and 332.075, Ethics in Contracting, and Procurement from Qualified Rehabilitation Facilities. Divisions 46, 47, 48, and 49 govern Public Contracts as defined in ORS Chapters 279A, 279B, and 279C (the Public Contracting Code). Except as otherwise expressly provided in School Board Policy or these Rules, these Division 45 Rules apply to all District Contracts, including Public Contracts as defined in the Public Contracting Code.

**NCS D-45-0100 Definitions**

As used in the Public Contracting Code and Divisions 45, 46, 47, 48, and 49 of these Rules, and except as otherwise provided in School Board Policy:

**(1) "District Contract"** means all Contracts entered into by the District, including Public Contracts subject to the Public Contracting Code and Divisions 46, 47, 48, and 49, and all other Contracts or agreements entered into by the District. For the purpose of these Public Contracting Rules, "District Contract" does not include settlements of lawsuits or other claims against the District or the purchase, conveyance, acceptance, sale, or lease of real property or an interest in real property.

**AUTHORITY TO APPROVE AND EXECUTE DISTRICT CONTRACTS**

**NCS D-45-0200 Authority to Approve District Contracts; Delegation of Authority to Superintendent**

- (1)** The District is the Contracting Agency within the meaning of the Public Contracting Code.
- (2)** Except as otherwise provided in these Rules, the powers and duties of the Local Contract Review Board under these Rules shall be exercised and performed by the School Board, and the powers and duties of the District under the Rules shall be exercised and performed by the Superintendent.
- (3)** Except as provided in Section (4) of this Rule or as otherwise expressly authorized in these Rules, the School Board must approve all District Contracts.
- (4)** Pursuant to ORS 279A.075 and 332.075(3), and except as expressly limited by other School Board Policy, the School Board delegates to the Superintendent the authority to enter into and approve payment on District Contracts in the following circumstances:
  - (a)** The District Contract is within appropriations made by the School Board and is not a collective bargaining agreement or a Service Contract that includes the provision of labor performed by employees of the School District, as defined in ORS 332.075(3); and
  - (b)** In any of the following circumstances:
    - (A)** The total amount payable by the District under the individual District Contract does not exceed \$250,000 or, if the contract is a Revenue Contract, the total amount payable to the District does not exceed \$50,000;
    - (B)** The District Contract is for routine and customary expenditures, including but not limited to payroll, payroll taxes and benefits, utility bills, and postage;

**North Clackamas School District Public Contracting Rules**  
Division 45 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (C) Advance authorization has been given by the School Board for the Superintendent to execute a particular District Contract or class of District Contracts;
  - (D) The District Contract is an Emergency Procurement;
  - (E) The District Contract is a Change Order or Contract amendment to a prior-approved Contract authorized under these Rules;
  - (F) An offer of judgment made in the course of litigation in which the District is a party when the Superintendent and general counsel determine that such an offer is in the best interest of the District or is to the District's tactical advantage; or
  - (G) These Rules otherwise expressly authorize the Superintendent to approve the Contract.
- (5) The Superintendent may designate in Writing any District employee or employees to exercise all or a portion of the Superintendent's powers and duties under these Rules.

**PROCUREMENT FROM OREGON FORWARD CONTRACTORS ("OFC")**

**NCSD-45-0405 Oregon Forward Definitions**

- (1) "OFC" means a non-profit rehabilitation corporation that employs individuals with qualifying disabilities to provide products and services that has been qualified by the Department of Administrative Services under OAR 125-055-0015 to participate in the Oregon Forward Program.
- (2) "Oregon Forward Program Procurement List" means a listing of those nonprofit agencies for disabled individuals who currently are qualified, under OAR 125-055-0015, to participate in the Oregon Forward Program created by ORS 279.835 through 279.850 and includes, as required by ORS 279.850(1), a list of the products and services offered by OFCs and determined by the State Procurement Office, under OAR 125-055-0020, to be suitable for purchase by Contracting Agencies such as the District.

**NCSD-45-0410 Required Procurement of Oregon Forward Products or Services**

- (1) As required by ORS 279.850(1), if the District intends to procure a Product or Service that is listed on the Oregon Forward Program Procurement List, the District must procure that Product or Service, at the Price determined by the State of Oregon Procurement Office, from a OFC if the Product or Service is of Specifications appropriate to the District's Procurement needs and is available within the time required by the District.
- (2) The most current Oregon Forward Program Procurement List may be reviewed at the State of Oregon Procurement Office Web site.
- (3) The Public Contracting Code does not apply to Oregon Forward Program Procurements pursuant to ORS 279A.025(4). Oregon Forward Program Procurements are therefore exempt from Divisions 46, 47, 48, and 49 of these Rules.

**NCSD-45-0500 Contract Extensions**

Except as otherwise provided in these Rules:

- (1) **A Current Contract may be Extended to Complete the Contract Work.** If it appears that a District Contract will expire according to its terms before the Work provided under the Contract will be completed, the Superintendent may extend the Contract for such period of time necessary to complete the Work.

**North Clackamas School District Public Contracting Rules**  
Division 45 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**(2) An Expired Contract may be Reinstated to Complete the Contract Work.** If a District Contract inadvertently expires according to its terms before the Work provided under the Contract is completed, the Superintendent may reinstate the Contract for such period of time necessary to complete the Work. The reinstated Contract shall be deemed to begin upon the expiration of the prior Contract and end upon the termination date set forth in the extension.

**(3) A Contract Extension may not Include Substantive Amendments to the Contract.** An extension may not be used to amend or change the scope of the Contract or increase the price of the Contract, except as otherwise may be allowed in these Rules. Contract amendments are subject to NCSD-46-0480, NCSD-47-0800, NCSD-48-320, or NCSD-49-0910, depending on the type of Contract.

**END OF DIVISION 45**

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**NCSD DIVISION 46**

**PUBLIC CONTRACTING RULES APPLICABLE TO ALL PUBLIC CONTRACTS  
AND PERSONAL SERVICES CONTRACTS**

**NCSD-46-0000 Generally**

These Division 46 Rules are intended to implement the provisions of ORS 279A applicable to all public Procurements. Division 46 also addresses delegation of contracting authority under ORS 279A.075 and 332.075, Contracts for Personal Services, and ethics in District Contracting.

**NCSD-46-0100 Application; Federal Law Supremacy**

(1) Pursuant to ORS 279A.065(5), the District hereby adopts its own Public Contracting Rules ("Rules" or "a Rule"). Pursuant to ORS 279A.065(1), the Attorney General's Model Rules do not apply to the District. Pursuant to ORS 279A.065(5), the District adopts these Rules. These Rules consist of the following four Divisions:

- (a) Division 46 applies to all Public Contracts and implements ORS 279A.
- (b) Division 47 applies only to Public Contracts for Goods and Services and implements ORS 279B.
- (c) Division 48 applies only to Public Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services and related service contracts and implements ORS 279C.100 through 279C.125.
- (d) Division 49 applies only to Public Contracts for Public Improvements and implements ORS 279C.300 through 279C.910.

(2) Most of these Rules are adapted from the Attorney General's Model Rules and the numbering generally tracks the numbering in OAR Chapter 137 Divisions 46, 47, 48, and 49. Except where these Rules differ from the Model Rules, the District intends its Rules to be interpreted consistently with the Model Rules.

(3) These Rules apply to Public Contracts first advertised on or after July 1, 2024.

(4) The District shall review the Rules each time the Attorney General modifies the Model Rules to ensure compliance with statutory changes. The District may adopt other Rules, and modify as necessary, to carry out the provisions of the Public Contracting Code pursuant to ORS 279A.070.

(5) Except as otherwise expressly provided in ORS 279C.800 through 279C.870, and notwithstanding ORS 279A, 279B, and 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and federal statutes or regulations conflict with any provision of ORS 279A, 279B, and 279C.005 through 279C.670 or these Rules, or require additional conditions in Public Contracts not authorized by ORS 279A, 279B, and 279C.005 through 279C.670 or these Rules.

**NCSD-46-0110 Definitions**

As used in the Public Contracting Code and Divisions 45, 46, 47, 48, and 49 of these Rules, unless the context or a specifically applicable definition requires otherwise:

(1) **"Addendum"** or **"Addenda"** means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) **"Administering Contracting Agency"** means a governmental body in this state or in another jurisdiction that solicits and establishes the Original Contract for Procurement of Goods, Services, or Public

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

Improvements in a Cooperative Procurement. "Administering Contracting Agency" includes, for Interstate Cooperative Procurements, any governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules, or regulations, to enter into Public Contracts.

- (3) **"Award"** means, as the context requires, either the act or occurrence of the District's identification of the Person with whom the District shall enter into a Contract following the resolution of any protest of the District's selection of that Person and the completion of all Contract negotiations.
- (4) **"Bid"** means a Written response to an Invitation to Bid.
- (5) **"Bidder"** means a Person who submits a Bid in response to an Invitation to Bid.
- (6) **"Brand Name or Equal Specification"** is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers, or similar identifying characteristics to describe the standard of quality, performance, functionality, or other characteristics needed to meet the District's requirements, and that authorizes Offerors to offer Goods and Services that are equivalent or superior to those named or described in the Specification.
- (7) **"Brand Name Specification"** is defined in ORS 279B.200(2) and means a Specification limited to one or more products, Brand Names, makes, manufacturers' names, catalog numbers, or similar identifying characteristics.
- (8) **"Class Special Procurement"** is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065, and 279B.070, and is for the purpose of entering into a series of Contracts over time or for multiple Projects for the acquisition of a specified class of Goods or Services.
- (9) **"Closing"** means the date and time specified in a Solicitation Document as the deadline for submitting Offers.
- (10) **"COBID"** means the Certification Office for Business Inclusion and Diversity.
- (11) **"Code"** or **"Public Contracting Code"** is defined in ORS 279A.010 and means ORS Chapters 279A, 279B, and 279C.
- (12) **"Competitive Sealed Bidding"** is a Procurement process where a Contract is Awarded based on price pursuant to the lowest Responsive and Responsible Bidder.
- (13) **"Competitive Range"** means the Proposers with whom the District shall conduct discussions or negotiations if the District intends to conduct discussions or negotiations in accordance with NCSD-47-0261 or NCSD-49-0650. The size of the Competitive Range must be stated in the Solicitation Document.
- (14) **"Contract Price"** means, as the context requires, the maximum monetary obligation that the District either will or may incur under a Contract, including bonuses, incentives, and contingency amounts, if the Contractor fully performs under the Contract.
- (15) **"Contract Review Board"** or **"Local Contract Review Board"** means the District Board of Directors acting as the Local Contract Review Board for the District under ORS 279A.060.
- (16) **"Contracting Agency"** is defined in ORS 279A.010(1)(b) and means a Public Body authorized by law to conduct a Procurement. "Contracting Agency" includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any Person authorized by a Contracting Agency to conduct a Procurement on the Contracting Agency's behalf. "Contracting Agency" does not include the judicial department or the legislative department.
- (17) **"Contractor"** means the Person with whom the District enters into a Contract and is interchangeable with "Consultant" and "Provider."

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (18) **"Cooperative Procurement"** is defined in ORS 279A.200 and means a Procurement conducted by an Administering Contracting Agency on behalf of one or more governmental bodies. "Cooperative Procurement" includes, but is not limited to, multi-party Contracts and Price Agreements. "Cooperative Procurement" does not include an agreement formed among only governmental bodies under ORS Chapter 190 or other legal authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.
- (19) **"Cooperative Procurement Group"** means a group of authorized Contracting Agencies or other governmental body, domestic or foreign, joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements pursuant to ORS 279A.200.
- (20) **"Days"** means calendar Days.
- (21) **"Disqualification"** means a disqualification, suspension, or debarment pursuant to ORS 200.065, ORS 200.075, ORS 279A.110, or NCSD-46-0210.
- (22) **"District"** means School District No. 12, Clackamas County, Oregon, doing business as North Clackamas School District.
- (23) **"District Price Agreement"** means a Price Agreement issued by the District. Such Agreements may result from a Cooperative Procurement.
- (24) **"Designated Procurement Officer"** means the individual designated and authorized by the Superintendent to perform certain Procurement functions described in these Rules.
- (25) **"Descriptive Literature"** means the Offeror's materials submitted to provide information concerning the Goods and Services available in response to a solicitation.
- (26) **"Electronic Advertisement"** means the District's Solicitation Documents or Request for Quotes, Request for Information, or other document inviting participation in the District's Procurements available over the Internet via (a) the World Wide Web, (b) OregonBuys, or (c) an Electronic Procurement System other than OregonBuys.
- (27) **"Electronic Offer"** means a response to the District's Solicitation Documents or Request for Quotes submitted to the District via (a) the World Wide Web or some other Internet protocol or (b) an Electronic Procurement System utilized by the District.
- (28) **"Electronic Procurement System"** means OregonBuys or other system constituting an information system that Persons may access through the Internet, using HTTP (i.e., the World Wide Web) or some other Internet protocol, or that Persons may otherwise remotely access using a computer. An Electronic Procurement System enables the District to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to Procurement.
- (29) **"Emergency"** means circumstances that:
- (a) Could not have been reasonably 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.
- (30) **"Emergency Procurement"** means a sourcing method pursuant to ORS 279B.080.
- (31) **"Energy Savings Performance Contract"** means a Public Contract between the District and a Qualified Energy Service Company for the identification, evaluation, recommendation, design, and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(32) **"Engineer"** is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 through 672.325, and includes all terms listed in ORS 672.002(2).

(33) **"Facsimile"** means an exact reproduction or copy of graphic or verbal material converted into electrical signals that are transmitted via telephone to produce a paper copy of the material on the receiving fax machine.

(34) **"Findings"** is defined in ORS 279C.330 and means the justification for an exemption from Competitive Bidding for a Contract for a Public Improvement that includes, but is not limited to, information regarding:

- (a) Operational, budget, and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;
- (e) Public safety;
- (f) Market conditions;
- (g) Technical complexity; and
- (h) Funding sources.

(35) **"Flexible Services Contractor Pool"** or **"FSCP"** is a list of qualified contractors determined pursuant to a Request for Qualifications or other method of competitive solicitation with whom the Superintendent may enter into a Contract as provided for in these Rules.

(36) **"Fringe Benefits"** is defined in ORS 279C.800 and means the amount of:

- (a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund, or program; and
- (b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide Fringe Benefits, but only when the Contractor or subcontractor is not required by other federal, state, or local law to provide any of these benefits.

(37) **"Good-Faith Dispute"** is defined in ORS 279C.580 and means a documented dispute concerning:

- (a) Unsatisfactory job progress;
- (b) Defective Work not remedied;
- (c) Third-party claims filed or reasonable evidence that claims will be filed;
- (d) Failure to make timely payments for labor, equipment, and materials;
- (e) Damage to the prime Contractor or subcontractor; or
- (f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(38) **"Goods"** is defined in ORS 279A.010(1)(i) and means supplies, equipment, materials, and personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified herein.

(39) **"Goods and Services" or "Goods or Services"** is defined in ORS 279A.010(1)(j) and means any combinations of any of the items identified in the definitions of "Goods" and "Services."

(40) **"Grant"** is defined in ORS 279A.010(k) and means:

- (a) An agreement under which the District receives money, property, or other assistance including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the District and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or
- (b) An agreement under which the District provides money, property, or other assistance including, but not limited to, federal assistance that is characterized as a Grant by federal laws or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by the District is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.
- (c) "Grant" does not include a Public Contract:
  - (A) For a Public Improvement or Public Works, as defined in ORS 279C.800, or
  - (B) For Emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:
    - (i) The District pays moneys that the District has received under a Grant, and
    - (ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the District.

(41) **"Interstate Cooperative Procurement"** is defined in ORS 279A.200 and means a Permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules, or regulations to enter into Public Contracts and in which one or more of the participating governmental bodies are located outside of their state.

(42) **"Invitation to Bid" or "ITB"** means the Solicitation Document issued to invite Offers from prospective Contractors pursuant to either ORS 279B.055 or 279C.335.

(43) **"Joint Cooperative Procurement"** is defined in ORS 279A.200 and means a Cooperative Procurement that identifies:

- (a) The participating governmental bodies or the Cooperative Procurement Group;
- (b) The Contract requirements or estimated Contract requirements for Price Agreements.

(44) **"Land Surveyor"** is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon as provided under ORS 672.002 through 672.325, and includes all terms listed in ORS 672.002(5).

(45) **"Life-Cycle Cost"** means the total cost to the District of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (46) **"Life-Cycle Costing"** means the various quantifiable cost factors, in addition to the acquisition cost of Goods and Services (also referred to in this Rule as "product, equipment, and service, separately or in any combination thereof").
- (47) **"Locality"** is defined in ORS 279C.800 and means the following district in which the Public Works, or the major portion thereof, is to be performed: District 2, composed of Clackamas, Multnomah, and Washington Counties.
- (48) **"Lowest Responsible Bidder"** means the lowest Bidder who:
- (a) Has substantially complied with all prescribed Public Contracting procedures and requirements;
  - (b) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;
  - (c) Has not been debarred or disqualified by the District under ORS 279B.130 or 279C.440; and
  - (d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised Contract is a Public Improvement Contract.
- (49) **"Model Rules"** means the Attorney General's Model Rules of procedure for Public Contracting as required under ORS 279A.065.
- (50) **"Nonprofit Procurement Organization"** means a local, state, or national organization formed as a tax-exempt entity under the United States Internal Revenue Code for the purpose of conducting large-scale or volume-competitive Procurements as an agent for its governmental and/or nonprofit members in order to obtain the most favorable pricing or terms.
- (51) **"Nonresident Bidder"** is defined in ORS 279A.120 and means a Bidder who is not a resident Bidder.
- (52) **"OAR"** means the Oregon Administrative Rules.
- (53) **"Offer"** means a Written Offer to provide Goods or Services in response to a Solicitation Document.
- (54) **"Offeror"** means a Person who submits an Offer.
- (55) **"Opening"** means the date, time, and place announced in the Solicitation Document for the public opening of Offers.
- (56) **"OregonBuys"** means the web-based eProcurement system administered by the State Procurement Office.
- (57) **"ORS"** means the Oregon Revised Statutes.
- (58) **"Original Contract"** is defined in ORS 279A.200(f) and means the initial Contract or Price Agreement solicited and Awarded during a Cooperative Procurement by an Administering Contracting Agency.
- (59) **"Permissive Cooperative Procurement"** is defined in ORS 279A.200 and means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.
- (60) **"Person"** means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and 279C.815 and means any employer, labor organization, or any official representative of an employee or employer association.
- (61) **"Personal Services"** means the Services or type of Services performed under a Personal Services Contract as defined in NCSA-46-0500.
- (62) **"Personal Services Contract" or "PSC"** is a Contract primarily for Personal Services.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(63) **"Prevailing Rate of Wage"** is defined in ORS 279C.800 and means the rate of hourly wage, including all Fringe Benefits, paid in the Locality to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(64) **"Price Agreement"** means a Public Contract for the Procurement of Goods and Services at a set price with:

- (a) No guarantee of a minimum or maximum purchase; or
- (b) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods and Services in which the District does not guarantee a minimum or maximum additional purchase.

(65) **"Procurement"** is defined in ORS 279A.010(1)(w) and means the act of purchasing, leasing, renting, or otherwise acquiring Goods or Services. "Procurement" includes each function and procedure undertaken or required to be undertaken by the District to enter into a Public Contract, administer a Public Contract, and obtain the performance of a Public Contract under the Public Contracting Code.

(66) **"Procurement Description"** is defined in ORS 279B.005(1)(b) and means the words used in a solicitation to describe the Goods or Services to be procured. "Procurement Description" includes Specifications attached to or made a part of the solicitation.

(67) **"Procurement File"** is a file containing documents relating to a specific Procurement or Procurements that is maintained in the District's Procurement Division or in another District department or division that is responsible for the Procurement.

(68) **"Product Sample"** means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Documents as a sample.

(69) **"Proposal"** means a Written response to a Request for Proposals.

(70) **"Proposer"** means a Person who submits a Proposal in response to a Request for Proposals.

(71) **"Public Agency"** is defined in ORS 279C.800(5) and means the State of Oregon or any political subdivision thereof, or any county, city, district, authority, public corporation, or entity, and any instrumentality thereof organized and existing under law or charter.

(72) **"Public Body"** is defined in ORS 279A.010(1)(y) and has the meaning given that term in ORS 174.109.

(73) **"Public Contract"** or **"Contract"** means, except where these Rules otherwise expressly indicate, a "Public Contract" as defined in ORS 279A.010 and 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.

(74) **"Public Contracting"** is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying, or administering Public Contracts or Price Agreements.

(75) **"Public Improvement"** is defined in ORS 279A.010 and means a Project for construction, reconstruction, or major renovation on real property by or for the District. "Public Improvement" does not include:

- (a) Projects for which no funds of the District are directly or indirectly used, except for participation that is incidental or related primarily to Project design or inspection; or

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (b) Emergency Work, minor alteration, or ordinary repair or maintenance necessary to preserve a Public Improvement.

**(76) "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.

**(77) (a) "Public Works"** is defined in ORS 279C.800 and includes, but is not limited to:

- (A) Roads, highways, buildings, structures, and improvements of all types, the construction, reconstruction, major renovation, demolition, removal of hazardous waste, or painting to serve the public interest;
- (B) A Project for the construction, reconstruction, major renovation, demolition, removal of hazardous waste, or painting of a privately owned road, highway, building, structure, or improvement of any type that uses funds of a private entity and \$750,000 or more of funds of a Public Agency;
- (C) A Project for the construction of a privately owned road, highway, building, structure, or improvement of any type that uses funds of a private entity and in which 25% or more of the square footage of the completed Project will be occupied or used by a Public Agency.
- (D) Notwithstanding the provisions of ORS 279C.810(2)(a), (b), and (c), a device, structure or mechanism, or a combination of devices, structures or mechanisms that:
  - (i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and
  - (ii) Is constructed or installed, with or without using funds of a public agency, on land, premises, structures or buildings that a public body, as defined in ORS 174.109, owns;
- (E) Notwithstanding ORS 279C.800(b)(A) and ORS 279C.810(2)(b) and (c), construction, reconstruction, painting or major renovation of a road, highway, building, structure, or improvement of any type that occurs, with or without using funds of a public agency, on real property that a public university listed in ORS 352.002 owns.

(b) "Public Works" does not include:

- (A) The reconstruction or renovation of privately owned real property that is leased by a Public Agency; or
- (B) The renovation by a private nonprofit entity of publicly owned real property that is more than 75 years old if:
  - (i) The real property is leased to the private nonprofit entity for more than 25 years;
  - (ii) Funds of a Public Agency used in the renovation do not exceed 15% of the total cost of the renovation; and
  - (iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 13, 2007.

**(78) "Purchase Order"** means the District's document to formalize a purchase transaction with a Provider. Acceptance of a Purchase Order constitutes a Public Contract. The District's use of a Purchase Order must comply with the Public Contracting Code and these Rules.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (79) **"Purchasing Contracting Agency"** is defined in ORS 279A.200(1)(h) and means a governmental body that procures Goods, Services, or Public Improvements from a Contractor based on the Original Contract established by an Administering Contracting Agency.
- (80) **"QBS"** means the qualifications-based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contracts under certain circumstances.
- (81) **"Recycled Material"** means any material that would otherwise be a useless, unwanted, or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.
- (82) **"Recycled Product"** is defined in ORS 279A.010(1)(ii) and means all materials, Goods, and supplies, not less than 50% of the total weight of which consists of secondary and post-consumer waste, with not less than 10% of its total weight consisting of Post-consumer Waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.
- (83) **"Request for Proposals" or "RFP"** is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with either ORS 279B.060 or 279C.405 and related rules.
- (84) **"Request for Qualifications" or "RFQ"** means a Written document issued by the District to which Contractors respond in Writing by describing their experience with and qualifications for the Work described in the Solicitation Document.
- (85) **"Request for Quotes"** means a Written or oral request for prices, rates, or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services, or Public Improvements described in the request.
- (86) **"Responsible"** means meeting the standards set forth in NCSD-47-0640 or NCSD-49-0390(2), and not debarred or disqualified by the District under NCSD-47-0575 or NCSD-49-0370.
- (87) **"Resident Bidder"** is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this state, and has stated in the Bid whether the Bidder is a "Resident Bidder."
- (88) **"Responsible Offeror" (also "Responsible Bidder" or "Responsible Proposer" as applicable)** means a Person who has submitted an Offer and met the standards set forth in NCSD-47-0500 or NCSD-49-0390(2), and who has not been debarred or disqualified by the District under NCSD-47-0575 or NCSD-49-0370, respectively. When used alone, "Responsible" means meeting the aforementioned standards.
- (89) **"Responsive"** means having the characteristics of substantial completion in all material respects with applicable solicitation requirements.
- (90) **"Responsive Offer" (also, "Responsive Bid" or "Responsive Proposal," as applicable)** means an Offer that substantially complies in all material respects with applicable solicitation requirements.
- (91) **"Retainage"** is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the Contract by the District.
- (92) **"Revenue Contract"** means a Contract where the District is providing Goods or Services to another party for compensation. Revenue Contracts are typically intergovernmental agreements with other education or education-related social service providers, or Contracts with other community partners in furtherance of the District's educational mission.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(93) **"School Board"** means the District Board of Directors acting as the governing body of the District pursuant to ORS Chapter 332.

(94) **"Secondary Waste Content"** or **"Secondary Waste Materials"** is defined in ORS 279A.010(1)(jj) and means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process, such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

(95) **"Services"** is defined in ORS 279A.010(1) and means Services other than Personal Services designated under NCSD-46-0500 and ORS 279A.055.

(96) **"Signature"** means any Written mark, word, or symbol that is made or adopted by a Person with the intent to be bound and that is attached or logically associated with a Written document to which the Person intends to be bound.

(97) **"Signed"** means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(98) **"Solicitation Document"** means an Invitation to Bid, a Request for Proposals, Request for Quotes, or other similar document issued to invite Offers from prospective Contractors pursuant to ORS Chapters 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, a sole-source notice, an approval of a Special Procurement, or a request for product prequalification.

(99) **"Specifications"** means, with respect to Goods or Services, any description of the physical or functional characteristics of, or of the nature of, Goods and Services to be procured by the District, including any requirement for inspecting, testing, or preparing Goods or Services for delivery and the quantities or qualities of materials to be furnished under the Contract. See ORS 279B.200(3). With respect to Public Improvements, "Specifications" generally means any description of the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(100) **"Superintendent"** means the District Superintendent or the Superintendent's designee.

(101) **"Veteran" is defined in ORS 200.005.**

(102) **"Work"** means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract, and successful completion of all duties and obligations imposed by the Contract.

(103) **"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.

(104) **"Written"** means existing in Writing.

**NCSD-46-0120 Policy**

The District shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**NCSD-46-0130 Application of the Code and Rules; Exceptions**

- (1) Except as set forth in this Section, the District must exercise all rights, powers, and authority related to Public Contracting in accordance with the Public Contracting Code and these Rules.
- (2) The District may make a Procurement without Competitive Sealed Bidding, Competitive Sealed Proposals, or other competition required under ORS 279B.050 through ORS 279B.085 or NCSD-47-0255 through NCSD-47-0670, provided the Procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347), or other federal law that is, as determined by the Local Contract Review Board, similar to 10 U.S.C. 381 or section 211 of the Electronic Government Act of 2002, in effectuating or promoting transfers of property to the District.
- (3) Except as expressly provided herein, these Rules do not apply to the Contracts or classes of Contracts described in ORS 279A.025(2), including the following District Contracts:
- (a) Contracts between the District and:
    - (A) Another Contracting Agency;
    - (B) The Oregon Health and Science University;
    - (C) A public university listed in ORS 352.002;
    - (D) The Oregon State Bar;
    - (E) A governmental body of another state;
    - (F) The federal government;
    - (G) An American Indian tribe or an agency of an American Indian tribe;
    - (H) A nation, or a governmental body in a nation, other than the United States; or
    - (I) An intergovernmental entity formed between or among:
      - (i) Governmental bodies of this or another state;
      - (ii) The federal government;
      - (iii) An American Indian tribe or an agency of an American Indian tribe;
      - (iv) A nation other than the United States; or
      - (v) A governmental body in a nation other than the United States.
  - (b) Agreements authorized by ORS Chapter 190 or by a statute, charter provision, ordinance, or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
  - (c) Insurance and Service Contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145 for purposes of source selection;
  - (d) Grants;
  - (e) Contracts for professional or expert witnesses or Consultants to provide Services or testimony relating to existing or potential litigation or legal matters in which a Public Body is or may become interested;
  - (f) Acquisitions or disposals of real property or interest in real property;
  - (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection;

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (h) Contracts for the Procurement or distribution of textbooks;
  - (i) Procurements by the District from an Oregon Corrections Enterprises program;
  - (j) Contracts, agreements, or other documents entered into, issued, or established in connection with:
    - (A) The issuance of obligations, as defined in ORS 286A.100 and 287A.310, of a Public Body;
    - (B) The making of program loans and similar extensions or advances of funds, aid, or assistance by a Public Body to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or
    - (C) The investment of funds by a Public Body as authorized by law, and other financial transactions of a Public Body that by their character cannot practically be established under the competitive Contractor selection procedures of ORS 279B.050 through 279B.085;
  - (k) Contracts for employee benefit plans as provided in ORS 243.105 (1), 243.125 (4), 243.221, 243.275, 243.291, 243.303, and 243.565;
  - (l) Contracts for employee benefit plans as provided in ORS 243.860 through 243.886; or
  - (m) Any other Public Contracting of a Public Body specifically exempted from the Code by another provision of law.
- (4) Except as expressly provided herein, these Rules do not apply to Contracts entered into pursuant to ORS 279.835 through 279.855.

**MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES**

**NCSD-46-0210 Subcontracting to and Contracting with Emerging Small Businesses; Disqualification**

- (1) As set forth in ORS 279A.105, the District may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
- (a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or
  - (b) A business enterprise that is:
    - (A) Certified under ORS 200.055 as an emerging small business; and
    - (B) Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Business Development Department.
- (2) A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
- (a) Its principal place of business is located in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department; or
  - (b) The Contractor certifies in Writing to the District that a substantial number of the subcontractor's employees, or subcontractors that will manufacture the Goods or complete the Services under the Contract, reside in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the Department must determine in each particular instance what proportion of a Contractor's or subcontractor's employees or subcontractors constitutes a substantial number.
- (3) The District must include in each Solicitation Document a requirement that Offerors certify in their Offers, in a form prescribed by the District, that the Offeror has not and will not discriminate against a

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

subcontractor in the Awarding of a subcontract because the subcontractor is a minority-owned, women-owned, veteran-owned or emerging small business enterprise certified under ORS 200.055.

**(4) Disqualification.**

- (a) The District may disqualify a Person from consideration of Award of the District's Contracts under ORS 200.065(5), or suspend a Person's right to Bid on or participate in any Public Contract pursuant to ORS 200.075(1), after providing the Person with notice and a reasonable opportunity to be heard in accordance with Sections (4)(d) and (e) of this Rule.
- (b) As provided in ORS 200.065 and 200.075, the District may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:
  - (A) For a Disqualification under ORS 200.065, the District may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another district pursuant to ORS 200.065.
  - (B) For a Disqualification under ORS 200.075, the District may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(2)(a) through (c).
- (c) The District may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or ORS 200.075, as applicable.
- (d) The District shall notify the Person in Writing of a proposed Disqualification pursuant to this Section, served personally or by registered or certified mail, return receipt requested. This notice shall:
  - (A) State that the District intends to disqualify or suspend the Person;
  - (B) Set forth the reasons for the Disqualification;
  - (C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the District does not receive the Person's Written request for a hearing within the time stated, the Person must have waived its right to a hearing;
  - (D) Include a statement of the authority under which the hearing will be held;
  - (E) Include a reference to the particular sections of the statutes and rules involved;
  - (F) State the proposed Disqualification period; and
  - (G) State that the Person may be represented by legal counsel.
- (e) Hearing. The District must schedule a hearing upon the District's receipt of the Person's timely request. The District must notify the Person of the time and place of the hearing and provide information on the procedures, right of representation, and other rights related to the conduct of the hearing prior to the hearing. The Contract Review Board may hold the hearing or may designate a hearings officer to conduct the hearing.
- (f) Notice of Disqualification. The District will notify the Person in Writing of its Disqualification, served personally or by registered or certified mail, return receipt requested. The notice shall contain:
  - (A) The effective date and period of Disqualification;
  - (B) The grounds for Disqualification; and
  - (C) A statement of the Person's appeal rights and applicable appeal deadlines.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**CONTRACT PREFERENCES**

**NCS-D-46-0300 Preference for Oregon Goods and Services; Nonresident Bidders**

**(1) Tiebreaker Preference and Award When Offers Identical.** Under ORS 279A.120, when the District receives Offers that are identical in price, fitness, availability, and quality and chooses to Award a Contract, the District must Award the Contract based on the following order of precedence:

- (a) The District must Award the Contract to the Offeror among those submitting identical Offers that is offering Goods and Services that are manufactured, produced, or to be performed in Oregon.
- (b) If two or more Offerors submit identical Offers and they all offer Goods or Services, or both, or Personal Services, that are manufactured, produced, or to be performed in Oregon, the District must Award the Contract by drawing lots among the identical Offers. The District will provide the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots, and an opportunity for these Offerors to be present when lots are drawn.
- (c) If the District receives identical Offers and none of the identical Offers offer Goods or Services, or both, or Personal Services, that are manufactured, produced, or to be performed in Oregon, then the District must Award the Contract by drawing lots among the identical Offers. The District will provide to the Offerors who submitted the identical Offers notice of the date, time, and location of the drawing of lots, and an opportunity for these Offerors to be present when lots are drawn.

**(2) Determining if Offers are Identical.** The District will consider Offers identical in price, fitness, availability, and quality as follows:

- (a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability, and quality if the Bids are Responsive and offer the Goods or Services, or both, or Personal Services, described in the Invitation to Bid at the same price.
- (b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability, and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
- (c) Offers received in response to a Special Procurement conducted under ORS 279B.085 are identical in price, fitness, availability, and quality if, after completing the contracting procedure approved by the Contract Review Board, the District determines, in Writing, that two or more Proposals are equally advantageous to the District.
- (d) Offers received in response to an Intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the District in accordance with 279B.070(4).

**(3) Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon.** In applying Section (1) of this Rule, the District will determine whether a Contract is predominantly for Goods, Services, or Personal Services and then use the predominant purpose to determine if the Goods, Services, or Personal Services are manufactured, produced, or performed in Oregon. The District may request, either in a Solicitation Document, following Closing, or at any other time the District determines is appropriate, any information the District may need to determine if the Goods, Services, or Personal Services are manufactured or produced in Oregon. The District may use any reasonable criteria to determine if Goods, Services, or Personal Services are manufactured, produced, or performed in Oregon, provided that the criteria reasonably relate to that determination, and provided that the District applies those criteria equally to each Offer.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**(4) Procedure for Drawing Lots.** When this Rule calls for the drawing of lots, the District shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of selection and that does not allow the Person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

**(5) Discretionary Preference and Award.** Under ORS 279A.128, the District may provide, in a Solicitation Document for Goods, Services, or Personal Services, a specified percentage preference of not more than 10% for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the District provides for a preference under this Section and more than one Offeror qualifies for the preference, the District may give a further preference to a qualifying Offeror that resides in or is headquartered in Oregon. The District may establish a preference percentage higher than 10% by Written order that finds good cause to establish the higher percentage and that explains the District's reasons and evidence for finding good cause to establish a higher percentage. The District may not apply the preferences described in this Section in a Procurement for Emergency Work, minor alterations, ordinary repairs or maintenance of public improvements, or construction Work that is described in ORS 297C.320.

**NCSD-46-0310 Reciprocal Preferences**

**(1)** When evaluating Bids pursuant to NCSD-47-0255 through NCSD-47-0257, NCSD-49-0390, or NCSD-49-0640 through NCSD-49-0660, the District must add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. The District may rely on the list prepared and maintained by the state pursuant to ORS 279A.120(4) to determine both whether the Nonresident Bidder's state gives preference to in-state Bidders and the amount of such preference.

**NCSD-46-0320 Preference for Recycled Materials**

**(1)** Notwithstanding provisions of law requiring the District to Award a Contract to the lowest or best Offeror, and in accordance with Section (2) of this Rule, the District may give preference to the Procurement of Goods manufactured from Recycled Materials whenever the District uses Competitive Sealed Bidding or Competitive Sealed Proposals and as set forth in this Rule.

**(2)** In comparing Goods from two or more Offerors, if at least one Offeror Offers Goods manufactured from Recycled Materials and at least one Offeror does not, the District may select the Offeror offering Goods manufactured from Recycled Materials if each of the following four conditions exists:

- (a)** The Recycled Product is available;
- (b)** The Recycled Product meets applicable standards;
- (c)** The Recycled Product can be substituted for a comparable non-recycled product; and
- (d)** The Recycled Product's costs do not exceed the costs of non-recycled products by more than 5%, or a higher percentage if a Written determination is made by the District and set forth in the Solicitation Document. For purposes of making the foregoing determination, the District must consider the costs of the Goods following any adjustments the District makes to the price of the Goods for purposes of evaluation pursuant to NCSD-46-0310.

**(3)** Offerors must certify in their Offers:

- (a)** The minimum, if not exact, percentage of Recycled Product in all materials and supplies offered; and
- (b)** Both the post-consumer and Secondary Waste Content thereof.

**(4)** To be eligible for a preference under ORS 279A.125 and this Rule:

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (a) The Offeror must indicate which materials and supplies contain verifiable recycled content; and
  - (b) Such products must meet the requirements of ORS 279A.125 and this Rule.
- (5) A preference under ORS 279A.125 will only be applied to those products in the Offer that contain verifiable recycled content.
- (6) Offers that contain false information about (i) the percentage of Recycled Product, post-consumer, and Secondary Waste Content or (ii) verifiable recycled content, must be rejected as non-responsive, and the Offeror offering false information may be deemed non-responsible.

**NCSD-46-0330 Solicitations and Specifications to Comply with School Board Environmental and Sustainability Policies.**

The District shall develop specifications for and procure Goods, Services, and Public Improvements in compliance with the applicable School Board environmental and sustainability policies.

**COOPERATIVE PROCUREMENT**

**NCSD-46-0400 Authority for Cooperative Procurements**

- (1) The District may participate in, sponsor, conduct, or administer any of the following:
- (a) Joint Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Goods and Services using a source-selection method substantially equivalent to those set forth in ORS 279B.055, 279B.060, or 279B.085, or to establish Original Contracts or Contracts for Public Improvements that use a Competitive Bidding process substantially equivalent to that set forth in ORS 279C.005 through 279C.870.
  - (b) Permissive Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Goods and Services only, using a source-selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
  - (c) Interstate Cooperative Procurements to establish Original Contracts or Contracts for the acquisition of Goods and Services only, using a source selection method substantially equivalent to those set forth in ORS 279B.055 or 279B.060.
- (2) The District must determine, in Writing, whether the solicitation and Award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060, or ORS 279B.085 in accordance with ORS 279A.200(2). This Written documentation must be maintained in the District's Procurement File.

**NCSD-46-0410 Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies**

- (1) If the District is an Administering Contracting Agency of a Cooperative Procurement, the District may establish the conditions under which Persons may participate in the Cooperative Procurement administered by the District. Such conditions may include, without limitation, whether each Person who participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether each Person must enter into a Written agreement with the District, and any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. When acting as an Administering Contracting Agency, the District may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement and advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Rules.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

(2) If the District is acting as a Purchasing Contracting Agency and enters into a Contract based on a Cooperative Procurement, the District shall comply with the Code and these Rules, including, without limitation, those sections of the Code and these Rules that govern:

- (a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement;
- (b) The advertisement of the Solicitation Document related to the Cooperative Procurement; and
- (c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts based on a Cooperative Procurement.

**NCSD-46-0420 Joint Cooperative Procurements**

(1) **Applicability.** The District may participate in, sponsor, conduct, or administer a Joint Cooperative Procurement for the purchase of Goods or Services or Public Improvements. The District must comply with the procedures set out in ORS 279A.210 and these Rules to procure Goods and Services or Public Improvements using a Joint Cooperative Procurement. Only the Participating Agencies listed in the solicitation and original Contract Documents may enter into a Contract through a Joint Cooperative Procurement. A Joint Cooperative Procurement may not be a Permissive Cooperative Procurement.

(2) **Solicitation Requirements.** The District may administer or participate in a Joint Cooperative Procurement only if:

- (a) The Administering Contracting Agency's solicitation and Award process for the Original Contract is an open and impartial competitive process and uses source-selection methods substantially equivalent to those specified in ORS 279B.055, 279B.060, or 279B.085, or uses a Competitive Bidding process substantially equivalent to the Competitive Bidding process in ORS 279C;
- (b) The Administering Contracting Agency's solicitation and the Original Contract or Price Agreement 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 between the Contractor and the Purchasing Contracting Agency from the terms, conditions, and prices of the Original Contract between the Contractor and the Administering Contracting Agency.

**NCSD-46-0430 Permissive Cooperative Procurements**

(1) **Applicability.** The District may only participate in, sponsor, conduct, or administer a Permissive Cooperative Procurement for the purchase of Goods or Services, but not for Public Improvements. The District must comply with the procedures set out in ORS 279A.215 and these Rules to procure Goods and Services using a Permissive Cooperative Procurement. A Permissive Cooperative Procurement is not a Joint Cooperative Procurement.

(2) **Solicitation Requirements.** The District may establish or participate in a Contract or Price Agreement through a Permissive Cooperative Procurement only if:

- (a) The Administering Contracting Agency's solicitation and Award process for the Original Contract is an open and impartial competitive process and uses source-selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;
- (b) The Administering Contracting Agency's solicitation and the Original Contract allow other Contracting Agencies to establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract;

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (c) The Contractor agrees to extend the terms, conditions, and prices of the Original Contract to the Purchasing Contracting Agency; and
- (d) No material change is made in the terms, conditions, or prices of the Contract or Price Agreement between the Contractor and the Purchasing Contracting Agency from the terms, conditions, and prices of the Original Contract between the Contractor and the Administering Contracting Agency.

**NCSD-46-0440 Required Public Notice if Permissive Cooperative Procurement is Over \$250,000**

- (1) The District must publish a notice of its intent to enter into a Contract through a Permissive Cooperative Procurement if the District estimates that it will spend in excess of \$250,000 for the purchase of the Goods and Services to be acquired under the Contract.
- (2) For purposes of determining if the District must give a notice of intent, the District will spend in excess of \$250,000 for Goods and Services procured under the Contract if:
  - (a) The District intends to make payments, in aggregate, over the term of the Contract in excess of \$250,000, whether or not the total amount or value of the payments is expressly stated in the Contract;
  - (b) The District's Contract expressly provides for payment, whether a fixed or maximum price, in excess of \$250,000; or
  - (c) At the time the District enters into the Contract, the District reasonably contemplates, based on historical or other data available to the District, that the total payments it will make for the Goods or Services, or Personal Services, under the Contract will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract.
- (3) The notice of intent must contain the following information:
  - (a) A description of the Procurement;
  - (b) An estimated amount of the Procurement;
  - (c) The name of the Administering Contracting Agency, and
  - (d) A time, place, and date by which comments must be submitted to the District regarding the notice of intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement.
- (4) The notice must be published:
  - (a) At least once in at least one newspaper of general circulation in the District or electronically in the same manner as the District publishes electronic notices of Invitations to Bid or Requests for Proposals; and
  - (b) No fewer than seven Days before the deadline for submission of comments regarding the notice of intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.
- (5) Vendors must submit comments within seven Days after the notice of intent is published.
- (6) If the District receives comments on its intent to establish a Contract, the District must, prior to establishing a Contract or Price Agreement:
  - (a) Make a Written determination that establishing a Contract is in the best interest of the District.
  - (b) Provide a copy of the Written determination to all vendors that submitted comments.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

**NCSD-46-0450 Interstate Cooperative Procurements**

- (1) **Applicability.** The District may only participate in an Interstate Cooperative Procurement for the purchase of Goods and Services pursuant to ORS 279A.220 and these Rules to procure Goods or Services, but not Public Improvements.
- (2) **Solicitation Requirements.** The District may establish a Contract or Price Agreement through an Interstate Cooperative Procurement only if:
- (a) The Administering Contracting Agency's solicitation and Award process for the Original Contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;
  - (b) The Administering Contracting Agency's solicitation and the Original Contract allows other governmental bodies to establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract; and
  - (c) The Administering Contracting Agency permits the Contractor to extend the use of the terms, conditions, and prices of the Original Contract to the Purchasing Contracting Agency.

**NCSD-46-0460 Advertisements of Interstate Cooperative Procurements**

The District may only participate in an Interstate Cooperative Procurement if at least one of the following occurs:

- (1) The Solicitation Document for the Interstate Cooperative Procurement lists the District, or the Cooperative Procurement Group of which the District is a member, as a party that may establish Contracts or Price Agreements under the terms, conditions, and prices of the Original Contract, and the Solicitation Document is advertised in Oregon in compliance with 279B.055(4) or 279B.060(4) by:
- (a) The Administering Contracting Agency;
  - (b) The District;
  - (c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group of which the District is a member; or
  - (d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or 279B.060(4) with respect to the Purchasing Contracting Agency.
- (2) If the Solicitation Document issued by the Administering Contracting Agency was not advertised in accordance with NCSD-46-0460(1), the District gives notice of its intent to enter into a Public Contract or Price Agreement based on the terms of the Interstate Cooperative Procurement.
- (a) The notice of intent must contain the following information:
    - (A) A description of the Procurement;
    - (B) An estimated amount of the Procurement;
    - (C) The name of the Administering Contracting Agency, and;
    - (D) A time, place, and date by which comments must be submitted to the District regarding the notice of intent to establish a Contract or Price Agreement through the Interstate Cooperative Procurement.
  - (b) The notice must be published:

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (A) At least once in at least one newspaper of general circulation in the District or electronically in the same manner as the District publishes electronic notices of ITB or RFP; and
- (B) No fewer than seven Days before the deadline for submission of comments regarding the notice of intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.
- (c) Vendors must submit comments within seven Days after the notice of intent is published.
- (d) If the District receives comments on its Intent to establish a Contract, the District must, prior to establishing a Contract or Price Agreement:
  - (A) Make a Written determination that establishing a Contract is in the best interest of the District.
  - (B) Provide a copy of the Written determination to all vendors that submitted comments.

**NCSD-46-0470 Protest and Disputes; Cooperative Procurements**

- (1) An Offeror or potential Offeror wishing to protest the Procurement process, the contents of a Solicitation Document related to a Cooperative Procurement, or the Award or proposed Award of an Original Contract shall make the protest in accordance with ORS 279B.400 through 279B.425, unless the Administering Contracting Agency is not subject to the Code. If the Administering Contracting Agency is not subject to the Code, then the Offeror or potential Offeror shall make the protest in accordance with the processes and procedures established by the Administering Contracting Agency.
- (2) Any other protests related to a Cooperative Procurement, or disputes related to a Contract arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.
- (3) The failure of the District or other Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract entered into through a Cooperative Procurement shall not affect the rights or remedies of the District or any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract arising out of the Cooperative Procurement.

**NCSD-46-0480 Contract Amendments; Cooperative Procurements**

The District may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in NCSD-47-0800 or NCSD-49-0910, as applicable.

**PERSONAL SERVICES CONTRACTS**

**NCSD-46-0500 Personal Services Contract Definition**

- (1) Pursuant to ORS 279A.055(2), a Contract for Personal Services ("PSC") is a Contract primarily for the provision of Services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of Services depends on attributes that are unique to the service provider.
- (2) PSCs that fall within the definition in Section (1) of this Rule include, but are not limited to, the following:
  - (a) Contracts for Services performed in a professional capacity, including services of an accountant, attorney, medical professional (e.g., doctor, dentist, nurse, counselor), information technology consultant, or broadcaster, except for Architectural, Engineering, Photogrammetric Mapping or

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

Land Surveying Services and other construction-related professional services subject to Division 48 of these Rules;

- (b) Contracts for Services as an artist in the performing or fine arts, including any Person identified as a photographer, filmmaker, actor, director, painter, weaver, or sculptor;
- (c) Contracts for Services that are specialized, creative, or research-oriented;
- (d) Contracts for educational services;
- (e) Contracts for human custodial care, child care, mental health care, health services, social and emergency services, and other human services; and
- (f) Contracts for other professional or technical consulting services not listed above.

(3) The Contract Review Board delegates to the Superintendent the discretion to decide whether a particular type of Contract or Service falls within the definition of "Personal Services Contract" as set forth in Sections (1) and (2) of this Rule.

(4) The District shall not use PSCs to obtain and pay for the Services of an employee. A PSC may be used only to obtain and pay for the Services of an independent Contractor.

**NCSD-46-0505 Personal Service Contract Formal Selection Procedures**

The District will use a formal selection procedure if the estimate contract amount of personal services contract is greater than \$250,000. All formal RFP and RFQ solicitations must comply with the requirements for Competitive Sealed Proposals contained in ORS 279B.060 and may be solicited, processed, and reviewed through any of the Sealed Proposal Procurement methods set forth in NCSD-47-0260 to NCSD-47-0263.

**NCSD-46-0510 PSC Informal Selection Procedures**

The District may use an informal selection process to obtain Personal Services when a formal selection process is not required.

(1) The informal selection process must solicit responses/Proposals from at least three qualified Contractors offering the required Services. If three Proposals are not reasonably available, fewer will suffice, but the District shall make a Written record of the effort made to obtain at least three Proposals.

(2) The informal selection process is intended to be competitive. The selection and ranking 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;
- (f) Geographic proximity to the Project or the area where the Services are to be performed; and
- (g) Work volume previously Awarded by the District, with the object of effecting an equitable distribution of Contracts among qualified Contractors. But distribution must not violate the policy of selecting the most highly qualified Contractor to perform the Services at a fair and reasonable price.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

Written confirmation of solicitation attempts and responses with Contractor names and addresses shall be maintained in the District's Procurement File.

**NCSD-46-0515 Other Approved Solicitation Methods**

**(1) Request for Qualifications.** An RFQ may be used to determine that competition does not exist for a particular Service, to establish a list of qualified Contractors for RFPs or for informal solicitations under these Rules, or to establish an FSCP as provided in NCSD-46-0520.

- (a) The RFQ must at least describe the particular specialty desired, the qualifications the Contractor must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to, the Contractor's particular capability to perform the required Services; the number of experienced staff available to perform the required Services, including specific qualifications and experience of personnel; a list of similar Services the Contractor has completed with references concerning past performance; and any other information necessary to evaluate Contractor qualifications.
- (b) A qualifications pre-submission meeting (voluntary or mandatory) may be held for all interested Contractors to discuss the proposed Services. The RFQ must include the date, time, and place of the meeting.
- (c) Unless the RFQ establishes that competition does not exist or that Contracts will be individually negotiated with Contractors in an FSCP, each Contractor qualified under an RFQ will receive a notice (or other materials as appropriate) of any required Services and have an opportunity to submit a Proposal or Price Quote in response to the District's subsequent RFP.

**(2) Price Agreements.** The District may enter into Price Agreements for Personal Services. Such Price Agreements shall be solicited as otherwise required by these Rules based on the maximum Contract amount.

**(3) Cooperative Procurement.** The District may contract for Personal Services pursuant to a Cooperative Procurement in compliance with NCSD-46-0400 to NCSD-46-0480.

**NCSD-46-0520 Flexible Services Contractor Pool**

The Superintendent may establish an FSCP for a particular class of Services where the need for such Services is ongoing in nature, where it is difficult to anticipate the Service need, time, amount, or availability of Contractors, or where Service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these Rules. An FSCP shall comply with the following requirements:

**(1) Solicitation to Create an FSCP.** An FSCP can be established pursuant to an RFQ, an RFP, Competitive Quotes, or such other method of competitive Procurement as the Superintendent deems to be appropriate given the Services to be procured.

- (a) The Superintendent shall document in the Procurement File the reasons for establishing an FSCP consistent with this Rule. This documentation must be reviewed and approved by the Director of Business Operations as demonstrating that the Procurement qualifies for use of an FSCP under these Rules.
- (b) The solicitation shall describe the class of Contracts that can be Awarded to Contractors in the FSCP. The District may not Award Contracts outside the designated class of Contracts to the FSCP.
- (c) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (d) The solicitation may request a binding Price Quote or rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.
- (e) The solicitation may set or limit the value of the Work performed by the FSCP.

**(2) Contracting for Work from an FSCP.**

- (a) Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform individual Projects within the established scope of the Work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual Projects will be offered, negotiated, and Awarded sequentially to Contractors on the FSCP list. Once the superintendent has offered Work to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer Work out of sequence in the following circumstances:
  - (A) The Contractor that is next on the list declines or is unavailable during the time period needed.
  - (B) Contract negotiations with the next-listed Contractor are not successful.
  - (C) The Project is for Work that is a continuation of, addition to, or connected with Work previously performed by a Contractor on the list and such prior experience means that it is in the best interest of the District to Award the Contract to the Contractor that performed the prior Work.
  - (D) The nature of the Project is such that the Superintendent determines that an additional analysis of Contractor capability is required. In order to make this determination, the Superintendent shall conduct an informal Procurement pursuant to NCSO-46-0510 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in Writing in the Procurement File.

- (b) An FSCP established under this Section will expire after three years from the date of Closing of the solicitation, unless reestablished as provided in this Rule. The term of an FSCP Contract may not exceed five years.
- (c) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of Work or any Work at all.
- (d) The establishment of an FSCP does not preclude the Superintendent from procuring Work that would otherwise fall within the FSCP class of Work from other Contractors through any other Procurement method authorized under these Rules.
- (e) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, or other capability needed to perform the class of Work.

**NCSO-46-0525 PSC Selection by Negotiation**

The Superintendent may procure Personal Services with Contractors through direct negotiation in any of the following circumstances:

- (1) The Contract Price is not more than \$75,000.
- (2) The Superintendent has established an FSCP pursuant to NCSO-46-0520(2) for a particular class of Projects, and the Contractor is on the FSCP list.

**North Clackamas School District Public Contracting Rules**  
Division 46 – Public Contracting Rules Applicable to All Public Contracts  
and Personal Services Contracts

- (3) The nature of the Work is not Project-driven but requires an ongoing, long-term relationship of knowledge and trust. Examples of such Work include legal services, insurance brokerage/agent of record services, medical services, and audit services.
- (4) The Contractor possesses unique knowledge and/or expertise in a specialized service area, making competition impractical. Such Services can include, but are not limited to, education Services, academic and staff coaching, school sports officiation, and community relations.
- (5) A Contract for which a non-District funding source, e.g., a Grant or a federal, state, or city contract, identifies the Contractor in the funding award or makes a funding award conditioned upon the Service being performed by a specific Contractor. The following must be documented to the Procurement File:
  - (a) The name of the external funding source;
  - (b) The background on how the funding source selected the Contractor(s); and
  - (c) A copy of the funder's document naming the Contractor.
- (6) A Contract where the student, parent, or other third-party participant selects the service provider and the process for selecting qualified Contractors has been approved in advance by the Director of Business Operations.
- (7) The Contract is entered into pursuant to an emergency declared by the Superintendent.
- (8) The Contract is for the provision of therapeutic placements for Special Education students.
- (9) The Contract is for the provision of child care services to District students where the Contractor is paid directly by a non-District funding source (generally parents).
- (10) The Contract is for interim staff or temporary staffing services.

**NCS-46-0530 PSC Contract Requirements**

District PSCs must contain the mandatory Contract provisions set forth in ORS 279B.020(5), 279B.220, 279B.230, 279B.235(3), and, if the Contract involves lawn or landscape maintenance, 279B.225.

**END OF DIVISION 46**

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**NCSD DIVISION 47**

**PUBLIC CONTRACTING RULES FOR CONTRACTS FOR GOODS AND/OR  
SERVICES OTHER THAN PERSONAL SERVICES**

**NCSD-47-0000 Generally**

These Division 47 Rules implement ORS 279B applicable to public Procurements for Goods or Services, or both.

**NCSD-47-0250 Methods of Source Selection**

- (1) Except as permitted in these Rules, the District must Award a Public Contract for Goods or Services, or both, by one of the following sourcing methods:
- (a) Competitive Sealed Bidding (also known as Invitation to Bid or ITB) pursuant to ORS 279B.055 and NCSD-47-0255 and -0257;
  - (b) Competitive Sealed Proposals (also known as Request for Proposals or RFP) pursuant to ORS 279B.060 and NCSD-47-0260 through 0263;
  - (c) Small Procurements (\$25,000 or less) pursuant to ORS 279B.065 and NCSD-47-0265;
  - (d) Intermediate Procurements (more than \$25,000 to \$250,000) pursuant to ORS 279B.070 and NCSD-47-0270;
  - (e) Sole-source Procurement pursuant to ORS 279B.075 and NCSD-47-0275;
  - (f) Emergency Procurement pursuant to ORS 279B.080 and NCSD-47-0280;
  - (g) Special Procurement pursuant to ORS 279B.085 and NCSD-47-0285, including the Class Special Procurements set forth in NCSD-47-0288; or
  - (h) Cooperative Procurement pursuant to ORS 279A.200 and NCSD-46-0400 through NCSD-46-0480.

**NCSD-47-0252 Procurement of Service Contracts Over \$250,000 in Compliance with ORS 279B.030 through ORS 279B.036**

(1) Unless the District determines that it is not feasible to perform the Services with the District's own personnel and resources pursuant to Section (4) of this Rule, before conducting a Procurement of a Contract for Services with an estimated Contract Price that exceeds \$250,000 the District shall conduct a Written cost analysis in accordance with Section (2) of this Rule. The cost analysis must compare an estimate of the District's cost in performing the Services with an estimate of the cost that a potential Contractor would incur in performing the Services. The District may proceed with the Procurement only if it determines that the District would incur more cost in performing the Services with its own personnel and resources than in procuring the Services from a Contractor. For the purposes of this Section, "Contract for Services" does not include:

- (a) Contracts for Personal Services as defined in NCSD-46-0500.
- (b) Contracts for Services exempted from compliance with the Public Contracting Code by ORS 197.025 or other state statute.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (c) Procurements for Client Services as defined in OAR 125-246-0110. "Client Services" means any Services that directly or primarily support a Client, whether or not the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Section. Client Services may include, but are not limited to (where these terms are used in another statute, they shall have that meaning):
- (A) Housing, including utilities, rent, or mortgage, or assistance to pay utilities, rent, or mortgage;
  - (B) Sustenance, including clothing;
  - (C) Employment training or skills training to improve employability;
  - (D) Services for people with disabilities;
  - (E) Foster care or foster care facilities;
  - (F) Residential care or residential care facilities;
  - (G) Community housing;
  - (H) In-home care, including home-delivered meals;
  - (I) Medical care, services, and treatment, including, but not limited to:
    - (i) Medical, dental, hospital, psychological, psychiatric, therapy, vision;
    - (ii) Alcohol and drug treatment;
    - (iii) Smoking cessation;
    - (iv) Drugs, prescriptions, and non-prescriptions; or
    - (v) Nursing services and facilities.
  - (J) Transportation or relocation;
  - (K) Quality of life, living skills training;
  - (L) Personal care;
  - (M) Legal services and expert witness services;
  - (N) Religious practices, traditions, and services, separately or in any combination thereof; and
  - (O) Educational services. The term "Client Services" does not include benefits or services provided as a condition of employment with an agency.
- (2) In the cost analysis required under Section (1) of this Rule, the District shall consider cost factors that include the following:
- (a) Cost of Using the District's Own Personnel and Resources. When estimating the District's costs of performing the Services, the District will consider cost factors that include:
    - (A) Salary or wage and benefit costs for District employees who are directly involved in performing the Services, including employees who inspect, supervise, or monitor the performance of the Services to the extent those costs reflect the proportion of the activity of those employees in the direct inspection, supervision, or monitoring of the performance of the subject Services.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (B) The material costs necessary for the performance of the Services, including costs for the space, energy, transportation, storage, raw and finished materials, equipment, and supplies used or consumed in the provision of the Services.
  - (C) Costs incurred in planning for, training for, starting up, implementing, transporting, and delivering the Services.
  - (D) Any costs related to stopping and dismantling a Project or operation because the District intends to procure a limited quantity of Services or procure the Services within a defined or limited period of time.
  - (E) The miscellaneous costs related to performing the Services. These costs exclude the District's indirect overhead costs for existing salaries or wages and benefits for administrators, and costs for rent, equipment, utilities, and materials except to the extent that the costs are attributable solely to performing the Services and would not exist unless the District performs the Services.
  - (F) Oregon Laws 2009, chapter 880, section 3(1)(a) provides that an estimate of the District's costs of performing the Services includes the costs described in Sections (A) through (E) of this Rule. Therefore, those costs do not constitute an exclusive list of cost information. The District may consider other reliable information that bears on the cost to the District of performing the Services. For example, if the District has accounted for its actual costs for performing the Services under consideration, or reasonably comparable Services in a relatively recent Services Project, the District may consider those actual costs in making its estimate.
- (b) Costs of a Potential Contractor. When estimating a Contractor's costs of performing the Services, the District will consider cost factors that include:
- (A) The average or actual salary or wage and benefit costs for Contractors and employees:
    - (i) Who work in the industry or business most closely involved in performing the Services; and
    - (ii) Who would be necessary and directly involved in performing the Services or who would inspect, supervise, or monitor the performance of the Services;
  - (B) The material costs necessary to the performance of the Services, including costs for space, energy, transportation, storage, raw and finished materials, equipment, and supplies used or consumed in the provision of the Services; and
  - (C) The miscellaneous costs related to performing the Services, including, but not limited to, reasonably foreseeable fluctuations in the costs for the items in Sections (A) through (C) of this Rule.
  - (D) Oregon Laws 2009, chapter 880, section 3(1)(a) provides that an estimate of the District's costs of performing the Services includes the costs described in Sections (A) through (E) of this Rule. Therefore, those costs do not constitute an exclusive list of cost information. The District may consider other reliable information that bears on the cost to the District of performing the Services. For example, if the District, in the reasonably near past, received Bids or Proposals for the performance of Services under consideration, or reasonably comparable Services, the District may consider the pricing offered in those Bids or Proposals in making its estimate. Similarly, the District may consider what it actually paid out under a Contract for the same or similar Services.

**(3) Exceptions.**

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a) Exception Based on Salaries or Wages and Benefits. If the sole reason that the costs estimated in Section (2)(b) of this Rule are lower than the costs estimated in Section (2)(a) of this Rule is because the average or actual salary or wage and benefit costs for Contractors and employees estimated in Section (2)(b)(A) of this Rule are lower than the salary or wage and benefit costs for employees of the District estimated in Section (2)(a)(A) of this Rule, the District may not proceed with the Procurement.
- (b) Exception Based on Lack of District Personnel and Resources; Reporting. In cases where the District determines that it would incur less cost in providing the Services with the District's own personnel and resources, the District may nevertheless proceed with the Procurement if, at the time the District intends to conduct a Procurement, the District determines that it lacks personnel and resources that are necessary to perform the Services within the time in which the Services are required. If the District conducts a Procurement under this Section, the District will:
  - (A) Make and keep a Written determination that it lacks personnel and resources to perform the Services within the time the District requires them and the basis for the District's decision to proceed with the Procurement.
  - (B) Provide to the Contract Review Board, each calendar quarter, copies of each Written cost analysis and Written determination.
- (4) **Provision of Services by District not Feasible.** The District may proceed with a Procurement of a Contract for Services without conducting a cost analysis required under Sections (1) and (2) of this Rule if the District makes Written Findings that use of the District's own personnel or resources to perform the Services is not feasible. Reasons include, but are not limited to, the following:
  - (a) The District lacks the specialized capabilities, experience, or technical or other expertise necessary to perform the Services. In making the Finding, the District shall compare the District's capability, experience, or expertise in the field most closely involved in performing the Services with a potential Contractor's capability, experience, or expertise in the same or a similar field.
  - (b) Special circumstances require the District to procure the Services by Contract. Special circumstances may include, but are not limited to, the following:
    - (A) The terms under which the District receives a Grant or other funds for use in a Procurement require the District to obtain Services through an independent contractor;
    - (B) Other state or federal law requires the District to procure Services through an independent contractor;
    - (C) The Procurement is for Services that are incidental to a Contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;
    - (D) The District cannot accomplish policy, administrative, or legal goals, including, but not limited to, avoiding conflicts of interest or ensuring independent or unbiased Findings in cases when using the District's existing personnel or Persons that the District could hire through a regular or ordinary process would not be suitable;
    - (E) The Procurement is for Emergency Services pursuant to NCSO-47-0280;
    - (F) The Procurement is for Services, the need for which is so urgent, temporary, or occasional that attempting to perform the Services with the District's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the Services;

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (G) The Services that the District intends to procure will be completed within six months after the date on which the Contract for the Services is executed; or

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (H) Any other circumstances, conditions, or occurrences that would make the Services, if performed by the District's own employees and resources, incapable of being managed, utilized, or dealt with successfully in terms of the quantity, timeliness of completion, success in obtaining desired results, or other reasonable needs of the District.

**NCSD-47-0255 Competitive Sealed Bidding; One-Step Solicitations**

(1) **Generally.** The District may procure Goods and Services by Competitive Sealed Bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a Competitive Sealed Bidding solicitation and must contain the information required by ORS 279B.055(2) and by Section (2) of this Rule. The District must provide public notice of the Competitive Sealed Bidding solicitation as set forth in NCSD-47-0300.

(2) **Invitation to Bid.** In accordance with ORS 279B.055(2), an Invitation to Bid must include the following:

(a) **General Information.**

(A) Notice of any pre-Offer conference as follows:

- (i) The time, date, and location of any pre-Offer conference;
- (ii) Whether attendance at the conference will be mandatory or voluntary; and
- (iii) A provision that provides that statements made by the District's representatives at the conference are not binding on the District unless confirmed by Written Addendum.

(B) A Procurement description;

(C) The form and instructions for submission of Bids, including the time, date, and place that Bids are due, and any other special information, e.g., whether Bids may be submitted by electronic means (see NCSD-47-0330 for required provisions of electronic Bids);

(D) The time, date, and place of Opening;

(E) Key contact information as follows:

- (i) The office or location where the Solicitation Documents may be reviewed;
- (ii) The name of the person designated for receipt of Bids;
- (iii) The name and title of the person designated by the District as the contact person for the Procurement, if different from the person designated to receive Bids.

(F) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(G) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);

(H) How the District will notify Bidders of Addenda, and how the District will make Addenda available (see NCSD-47-0430);

(I) A time, date, and place that prequalification applications, if any, must be filed, and the classes of work, if any, for which Bidders must be prequalified in accordance with ORS 279B.120;

(J) The following statements:

- (i) "The District may cancel the Procurement or reject any or all Bids in accordance with ORS 279B.100."

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (ii) A statement that requires the Contractor or subcontractor to possess an asbestos abatement license if required under ORS 468A.710.
- (b) District Need to Purchase. The character of the Goods or Services that the District is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection, and acceptance requirements. As required by Oregon Laws 2009, chapter 880, section 5, the District's description of its need to purchase must:
  - (A) Identify the scope of the Work to be performed under the resulting Contract, if the District Awards one;
  - (B) Outline the anticipated duties of the Contractor under any resulting Contract;
  - (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
  - (D) Unless the District for good cause specifies otherwise, the scope of Work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the District is purchasing.
- (c) Bidding and Evaluation Process.
  - (A) The anticipated solicitation schedule, deadlines, and protest process;
  - (B) The District must set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, the evaluation factors shall be reasonable estimates of actual future costs based on information that the District has available concerning future use; and
  - (C) If the District intends to Award Contracts to more than one Bidder pursuant to NCSD-47-0600(4)(c), the District must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. This may be left to the District's discretion at the time of the Award, provided it is so described in the Solicitation Document.
- (d) Applicable Preferences Pursuant to ORS 279B.055(6)(b).
  - (A) Preference for Oregon Goods and Services pursuant to ORS 279A.120 and NCSD-46-0300 and NCSD-46-0310; and
  - (B) Preference for Recycled Materials pursuant to ORS 279A.125 and NCSD-46-0320.
- (e) Terms and Conditions. All contractual terms and conditions in the form of Contract provisions that the District determines are applicable to the Procurement. As required by Oregon Laws 2009, chapter 880, Section 5, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of Work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
  - (A) The District's reduction or withholding of payment under the Contract;
  - (B) The District's right to require the Contractor to perform, at the Contractor's expense, any additional Work necessary to perform the statement of Work or to meet the performance standards established by the resulting Contract; and
  - (C) The District's rights, which the District may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (f) Whether Bid Security is Required.
- (g) Good Cause. For the purposes of this Rule, "good cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a Finding that the requirement would unreasonably limit competition or is not in the best interest of the District. The District shall document in the Procurement File the basis for the determination of good cause for specification otherwise. The District will have good cause to specify otherwise under the following circumstances:
- (A) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest-prevalent standards in performing the Contract;
  - (B) Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services, or information technology including hardware, Services, or software with which the Goods or Services will be used, integrated, or coordinated;
  - (C) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments that a reliable highest-prevalent standard does not exist or has not been developed;
  - (D) Any other circumstances in which the District's interest in achieving economy, efficiency, compatibility, or availability in the Procurement of the Goods or Services reasonably outweighs the District's practical need for the highest-prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

**NCSD-47-0257 Competitive Sealed Bidding; Multi-Step Solicitations**

**Multi-Step Sealed Bidding**

- (1) **Generally.** The District may procure Goods or Services by using Multi-step Sealed Bidding under ORS 279B.055(12).
- (2) **Phased Process.** Multi-step Sealed Bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive Sealed Bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit Competitive Sealed Price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.
- (3) **Public Notice.** When The District uses Multi-step Sealed Bidding, the District shall give public notice for the first phase in accordance with NCSD-47-0300. Public notice is not required for the second phase. However, the District shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under NCSD 47-0430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under NCSD-47-0720.
- (4) **Procedures Generally.** In addition to the procedures set forth in NCSD-47-0300 through NCSD-47-0490, the District shall employ the procedures set forth in this Rule for Multi-step Sealed Bidding and in the Invitation to Bid.
- (5) **Procedure for Phase One of Multi-step Sealed Bidding.**
- (a) **Form.** The District shall initiate Multi-step Sealed Bidding by issuing an Invitation to Bid in the form and manner required for Competitive Sealed Bids except as provided in this Rule. In

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

addition to the requirements set forth in NCS-47-0255(2), the Multi-step Invitation to Bid must state:

- (A) That the solicitation is a Multi-step Sealed Bid Procurement and describe the process that the District will use to conduct the Procurement;
  - (B) That the District requests unpriced submittals and that the District will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;
  - (C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope; and
  - (D) The criteria to be used in the evaluation of unpriced submittals.
- (b) **Evaluation.** The District shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.
- (6) **Procedure for Phase Two of Multi-step Sealed Bidding.**
- (a) After the completion of phase one, if the District does not cancel the solicitation, the District shall invite each eligible Bidder to submit a price Bid.
  - (b) The District shall conduct phase two as any other Competitive Sealed Bid Procurement except:
    - (A) As specifically set forth in this Rule or the Invitation to Bid;
    - (B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

**NCS-47-0260 Competitive Sealed Proposals; One-Step Solicitations**

(1) **Generally.** The District may procure Goods and Services by Competitive Sealed Proposals as set forth in ORS 279B.060. The District shall use a Request for Proposal to initiate a Competitive Sealed Proposal. The Request for Proposal must contain the information required by ORS 279B.060(2) and by Section (2) of this Rule. The District shall provide public notice of the Request for Proposals as set forth in NCS-47-0300.

(2) **Request for Proposal.** In accordance with the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

- (A) Notice of any pre-Offer conference as follows:
  - (i) The time, date, and location of any pre-Offer conference;
  - (ii) Whether attendance at the conference will be mandatory or optional; and
  - (iii) A provision that provides that statements made by the District's representatives at the conference are not binding on the District unless confirmed by Written Addendum.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (B) A Procurement description.
- (C) A time, date, and place that prequalification applications, if any, must be filed, and the classes of work, if any, for which Bidders must be prequalified in accordance with ORS 279B.120.
- (D) The form and instructions for submission of Proposals, including the time, date, and place that Proposals are due, and any other special information, e.g., whether Proposals may be submitted by electronic means;
- (E) The time, date, and place of Opening;
- (F) The office where the Solicitation Document may be reviewed;
- (G) Key contact information, as follows:
  - (i) The office or location where the Solicitation Documents may be reviewed;
  - (ii) The name of the Person designated for receipt of Proposals.
  - (iii) The name and title of the person designated by the District as the contact Person for the Procurement, if different from the Person designated to receive Proposals.
- (H) Proposers' certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4); and
- (I) How the District will notify Proposers of Addenda and how the District will make Addenda available. (See NCSD-47-0430).
- (J) The following statements:
  - (i) "The District may cancel the Procurement or reject any or all Proposals in accordance with ORS 279B.100."
  - (ii) A statement that requires the Contractor or subcontractor to possess an asbestos abatement license if required under ORS 468A.710.
- (b) District Need to Purchase. The character of the Goods or Services the District is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection, and acceptance requirements. As required by ORS 279B.060(2)(c), the District's description of its need to purchase must:
  - (A) Identify the scope of the Work to be performed under the resulting Contract, if the District Awards one; and
  - (B) Outline the anticipated duties of the Contractor under any resulting Contract; and
  - (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
  - (D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, Transportation Planning or Land Surveying Services or Related Services that are subject to ORS 279C.100 through 279C.125 or NCSD-46-0500 through 46-0525, or the District for good cause specifies otherwise, the scope of Work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the District is purchasing.
- (c) Proposal and Evaluation Process.
  - (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (B) The District must set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(E), including the relative importance of price and any other evaluation factors used to rate the Proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the Proposals will be evaluated in the subsequent tiers. Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible the factors must be reasonable estimates of actual future costs based on information available to the District.
  - (C) If the District's solicitation process calls for the District to establish a Competitive Range, the District shall generally describe, in the Solicitation Document, the criteria or parameters that the District will apply to determine the Competitive Range. The District, however, may subsequently determine or adjust the number of Proposers in the Competitive Range in accordance with NCSO-47-0261(6).
  - (d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), and 282.210.
    - (A) Preference for Oregon Goods and Services, pursuant to ORS 279A.120 and NCSO-46-0300 and NCSO-46-0310;
    - (B) Preference for Recycled Materials, pursuant to ORS 279A.125 and NCSO-46-0320; and
    - (C) Performance within the state of public printing, binding, and stationery Work, pursuant to ORS 282.210.
  - (e) Contractual Terms and Conditions. All contractual terms and conditions the District determines are applicable to the Procurement. The District's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions that the District will not include in the Request for Proposals because the District either will reserve them for negotiation or will request Proposers to offer or suggest those terms or conditions. (See NCSO-47-0260(3)).
  - (f) Consequences of Failure to Perform. As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of Work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
    - (A) The District's reduction or withholding of payment under the Contract;
    - (B) The District's right to require the Contractor to perform, at the Contractor's expense, any additional Work necessary to perform the scope of Work or to meet the performance standards established by the resulting Contract; and
    - (C) The District's rights, which the District may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.
  - (g) Whether Proposal security is required.
- (3) The District may include the applicable contractual terms and conditions in the form of Contract provisions or legal concepts to be included in the resulting Contract. Further, the District may specify that it will include or use Proposers' terms and conditions that have been pre-negotiated under NCSO-47-550(8), but the District may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent that those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The District shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under NCSO-47-0730.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(4) For multiple Award Contracts, the District may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The District shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under NCSD-47-0730.

(5) **Good Cause.** For the purposes of this Rule, "good cause" means a reasonable explanation for not requiring the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services Under the Contract, and may include an explanation of circumstances that support a Finding that the requirement would unreasonably limit competition or is not in the best interest of the District. The District shall document in the Procurement File the basis for the determination of good cause or for specifying otherwise. The District will have good cause to specify otherwise when the District determines that:

- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest-prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional, or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or ongoing Services with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest-prevalent standard does not exist or has not been developed;
- (d) That other circumstances in which the District's interest in achieving economy, efficiency, compatibility, or availability in the Procurement of the Goods or Services reasonably outweighs the District's practical need for the highest-prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

(6) **Optional Proposal Requirements.**

- (a) As provided in the Request for Proposals or in Written Addenda issued thereunder, the District may conduct site tours, demonstrations, individual or group discussions, and other informational activities with Proposers before or after the opening of Proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements or to consider and respond to requests for modifications of the Proposal requirements. The District shall use procedures designed to accord Proposers fair and equal treatment with respect to any opportunity for discussion and revision of Proposals.
- (b) For purposes of evaluation, when provided for in the Request for Proposals, the District may employ methods of Contractor selection that include, but are not limited to:
  - (A) An Award or Awards based solely on the ranking of Proposals;
  - (B) Discussions leading to best and final Offers, in which the District may not disclose private discussions leading to best and final Offers;
  - (C) Discussions leading to best and final Offers, in which the District may not disclose information derived from Proposals submitted by competing Proposers;
  - (D) Serial negotiations, beginning with the highest-ranked Proposer;
  - (E) Competitive simultaneous negotiations;

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (F) Multi-tiered competition designed to identify, at each level, a class of Proposers that fall within a Competitive Range or to otherwise eliminate from consideration a class of lower-ranked Proposers;
  - (G) A Multi-step Request for Proposals requesting the submission of unpriced technical submittals, and then later issuing a Request for Proposals limited to the Proposers whose technical submittals the District had determined to be qualified under the criteria set forth in the initial Request for Proposals; or
  - (H) Any combination of methods described in this paragraph as authorized or prescribed by these Rules.
- (c) Revisions of Proposals may be permitted after the submission of Proposals and before Award for the purpose of obtaining best Offers or best and final Offers.
  - (d) After the opening of Proposals, the District may issue or electronically post an Addendum to the Request for Proposals that modifies the criteria, rating process, and procedure for any tier of competition before the start of the tier to which the Addendum applies. The District shall send an Addendum that is issued by a method other than electronic posting to all Proposers who are eligible to compete under the Addendum. The District shall issue or post the Addendum at least five Days before the start of the subject tier of competition or as otherwise determined by the District to be adequate to allow eligible Proposers to prepare for the competition in accordance with rules adopted under ORS 279A.065.
- (7) The cancellation of Requests for Proposals and the rejection of Proposals must be in accordance with ORS 279B.100.
- (8) In the Request for Proposals, the District shall describe the methods by which the District will make the results of each tier of competitive evaluation available to the Proposers who competed in the tier. The District shall include a description of the manner in which the Proposers who are eliminated from further competition may protest or otherwise object to the District's decision.
- (9) The District shall issue or electronically post the notice of intent to Award described in ORS 279B.135 to each Proposer who was evaluated in the final competitive tier.
- (10) If a Contract is Awarded, the District shall Award the Contract to the responsible Proposer whose Proposal the District determines in Writing to be the most advantageous to the District based on the evaluation process and evaluation factors described in the Request for Proposals, any applicable preferences described in ORS 279A.120 and 279A.125, and, when applicable, the outcome of any negotiations authorized by the Request for Proposals. Other factors may not be used in the evaluation. When the Request for Proposals specifies or authorizes the Award of multiple Public Contracts, the District shall Award Public Contracts to the responsible Proposers who qualify for the Award of a Contract under the terms of the Request for Proposals.
- (11) The District may issue a request for information, a request for interest, a Request for Qualifications, or other preliminary documents to obtain information useful in the preparation of a Request for Proposals.

**NCSD-47-0261 Procedures for Competitive Range; Multi-Tiered and Multi-Step Solicitations**

(1) **Generally.** The District may procure Goods and Services employing any combination of the methods of Contractor selection as set forth in NCSD-47-0260(3)(b). In addition to the procedures set forth in NCSD-47-0300 through NCSD-47-0490 for methods of Contractor selection, the District may provide for a Multi-tiered or Multi-step selection process that permits Award to the highest-ranked Proposer at any tier or step, calls for the establishment of a Competitive Range, or permits either serial or competitive simultaneous discussions or negotiations with one or more Proposers.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (2) **Methods.** When conducting a Multi-tiered or Multi-step selection process, the District may use any combination or series of Proposals, discussions, negotiations, demonstrations, offers, or other means of soliciting information from Proposers that bears on the selection of a Contractor or Contractors. In Multi-tiered and Multi-step competitions, the District may use these means of soliciting information from prospective Proposers and Proposers in any sequence or order, and at any stage of the selection process, as determined in the discretion of the District.
- (3) **District may Elect to Award Contract Prior to Completion of Stages.** When the District's Request for Proposals prescribes a Multi-tiered or Multi-step Contractor selection process, the District nevertheless may, at the completion of any stage in the competition and on determining the most advantageous Proposer (or, in multiple Award situations, on determining the Awardees of the Public Contracts), Award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The District also may, at any time, cancel the Procurement under ORS 279B.100.
- (4) **Exclusion Protest.** The District may provide, before the notice of an intent to Award, an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of Multi-tiered or Multi-step sealed Proposals as set forth in NCSD-47-0720.
- (5) **Award Protest.** The District shall provide an opportunity to protest its Intent to Award a Contract pursuant to ORS 279B.410 and NCSD-47-0740. An Affected Offeror may protest, for any of the bases set forth in NCSD-47-0720(2), its exclusion from the Competitive Range or from any phase of a Multi-tiered or Multi-step Sealed Proposal process, or may protest an Addendum issued following initial Closing, if the District did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the District.
- (6) **Competitive Range.** When the District's solicitation process conducted under ORS 279B.060(8) calls for the District to establish a Competitive Range at any stage in the Procurement process, the District may do so as follows:
- (a) Determining Competitive Range.
    - (A) The District may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the District may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the District determines that a single Proposer has a reasonable chance of being determined the most advantageous Proposer, the District need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, the District may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.
    - (B) The District may establish the number of Proposers in the Competitive Range in light of whether the District's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most advantageous Proposer.
  - (b) Protesting Competitive Range. The District must provide Written notice to all Proposers identifying Proposers in the Competitive Range. The District may provide an opportunity for Proposers excluded from the Competitive Range to protest the District's evaluation and determination of the Competitive Range in accordance with NCSD-47-0720.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (7) **Discussions.** The District may initiate oral or Written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the District:
- (a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
  - (b) May disclose other eligible Proposers' Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);
  - (c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.
  - (d) At any time during the time allowed for discussions, the District may:
    - (A) Continue discussions with a particular eligible Proposer;
    - (B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or
    - (C) Conclude discussions with all remaining eligible Proposers and provide, to the then-eligible Proposers, notice requesting best and final Offers.
- (8) **Negotiations.**
- (a) Serial Negotiations Allowed. The District may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers. The District may negotiate:
    - (A) The statement of Work;
    - (B) The Contract Price as it is affected by negotiating the statement of work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and
    - (C) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a District shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.
  - (b) Terminating Negotiations. At any time during discussions or negotiations the District conducts under this Rule, the District may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the District reasonably believes that:
    - (A) The eligible Proposer is not discussing or negotiating in good faith; or
    - (B) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.
  - (c) Continuing Serial Negotiations. If the District is conducting serial negotiations and the District terminates negotiations with an eligible Proposer, the District may then commence negotiations with the next highest-scoring eligible Proposer, and continue the sequential process until the District has either:
    - (A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or
    - (B) Decided to cancel the Procurement under ORS 279B.100.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (d) Competitive Simultaneous Negotiations. If the District chooses to conduct competitive negotiations, the District may negotiate simultaneously with competing eligible Proposers. The District:
- (A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;
  - (B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the District notifies all of the eligible Proposers with whom the District will engage in negotiations of the District's intent to disclose before engaging in negotiations with any eligible Proposer.
- (e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.
- (9) **Best and Final Offers**. If the District requires best and final Offers, the District must establish a common date and time by which eligible Proposers must submit best and final Offers. If the District is dissatisfied with the best and final Offers, the District may make a Written determination that it is in the District's best interest to conduct additional discussions, negotiations or change the District's requirements and require another submission of best and final Offers. The District must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The District shall evaluate Offers as modified by the best and final Offers. The District shall conduct the evaluations as described in NCS-47-0600. The District may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.
- (10) **Multi-step Sealed Proposals**. The District may procure Goods or Services by using Multi-step Competitive Sealed Proposals under ORS 279B.060(8)(b)(g). Multi-step Sealed Proposals is a phased Procurement process that seeks necessary information or unpriced technical Proposals in the first phase and, in the second phase, invites Proposers who submitted technically qualified Proposals to submit Competitive Sealed Price Proposals on the technical Proposals. The District must Award the Contract to the Responsible Proposer submitting the most advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the second phase.
- (a) Public Notice. When the District uses Multi-step Sealed Proposals, the District shall give public notice for the first phase in accordance with NCS-47-0300. Public notice is not required for the second phase. However, the District shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the second phase of the right, if any, to protest exclusion under NCS-47-0720.
  - (b) Procedure for Phase One of Multi-step Sealed Proposals. The District may initiate a Multi-step Sealed Proposals Procurement by issuing a Request for Proposals in the form and manner required for Competitive Sealed Proposals except as provided in this Rule. In addition to the requirements required for Competitive Sealed Proposals, the Multi-step Request for Proposals must state:
    - (A) That unpriced technical Proposals are requested;
    - (B) That the solicitation is a Multi-step Sealed Proposal Procurement and that, in the second phase, priced Proposals will be accepted only from those Proposers whose unpriced technical Proposals are found qualified in the first phase;
    - (C) The criteria for the evaluation of unpriced technical Proposals; and
    - (D) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposals.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (c) Addenda to the Request for Proposals. After receipt of unpriced technical Proposals, Addenda to the Request for Proposals shall be distributed only to Proposers who submitted unpriced technical Proposals.
- (d) Receipt and Handling of Unpriced Technical Proposals. Unpriced technical Proposals need not be opened publicly.
- (e) Evaluation of Unpriced Technical Proposals. Unpriced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposals.
- (f) Discussion of Unpriced Technical Proposals. The District may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified, technical Proposal. During the course of such discussions, the District shall not disclose any information derived from one unpriced technical Proposal to any other Proposer.
- (g) Methods of Contractor Selection for Phase One. In conducting phase one, the District may employ any combination of the methods of Contractor selection that call for the establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this Rule.
- (h) Procedure for Phase Two. On the completion of phase one, the District shall invite each qualified Proposer to submit price Proposals. The District shall conduct phase two as any other Competitive Sealed Proposal Procurement except as set forth in this Rule.
- (i) No public notice need be given of the request to submit Price Proposals because such notice was previously given.

**NCSD-47-0265 Small Procurements**

- (1) **Generally.** For Procurements of Goods and Services less than or equal to \$25,000 or the dollar amount stated in ORS 279B.065, whichever amount is greater, the District may Award a Contract as a Small Procurement in any manner deemed practical or convenient by the District, including by direct selection or Award.
- (2) **Amendments.** The District may amend a Contract Awarded as a Small Procurement in accordance with NCSD-47-0800, but the cumulative amendments may not increase the total Contract Price to greater than \$31,250 or one hundred twenty-five percent (125%) of the dollar amount stated in ORS 279B.065, whichever amount is greater.
- (3) **No Fragmentation.** A Procurement may not be artificially divided or fragmented so as to constitute a Small Procurement. See ORS 279B.065(2).

**NCSD-47-0270 Intermediate Procurements**

- (1) **Generally.** For Procurements of Goods and Services greater than \$25,000 or the dollar amount stated in ORS 279B.065 and less than or equal to \$250,000 or the higher dollar amount stated in ORS 279B.070, the District may Award a Contract as an Intermediate Procurement pursuant to ORS 279B.070.
- (2) **Intermediate Solicitation Process.** When conducting an Intermediate Procurement, the District shall seek at least three informally solicited Competitive Price Quotes or Competitive Proposals from prospective Contractors. The District shall seek at least one quote from a COBID certified or self-identified women-owned, minority-owned, or veteran-owned business enterprise when feasible. The District shall keep a Written record of the sources of the Quotes or Proposals received. If three Quotes or Proposals are not reasonably available, or a quote is not obtained from a disadvantaged business, fewer will suffice, but the District shall make a Written record of the effort made to obtain the Quotes or Proposals.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (3) **Negotiations.** The District may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an Intermediate Procurement to clarify its Quote or Offer or to effect modifications that will make the Quote or Offer more advantageous to the District.
- (4) **Award.** If a Contract is Awarded, the District shall Award the Contract to the Offeror whose Quote or Proposal will best serve the interests of the District, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose, and Contractor responsibility under ORS 279B.110.
- (5) **Amendments.** The District may amend a Contract Awarded as an Intermediate Procurement in accordance with NCS-47-0800, but the cumulative amendments may not increase the total Contract Price to a sum that is greater than 25% or exceeds the higher dollar amount stated in ORS 279B.070 or one hundred twenty-five percent (125%) of the Original Contract Price, whichever is greater.
- (6) **No Fragmentation.** A Procurement may not be artificially divided or fragmented so as to constitute an Intermediate Procurement. See ORS 279B.070(2).

**NCS-47-0275 Sole-Source Procurements**

- (1) **Generally.** The Superintendent is delegated the authority to determine whether Goods and Service or a class of Goods and Services are available from only one source pursuant to ORS 279B.075. The Superintendent's determination must be based on Written Findings that may include information that:
- (a) The efficient utilization of existing Goods or Services requires the acquisition of compatible Goods or Services;
  - (b) 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) 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) **Public Notice.** If the Contract amount is greater than \$250,000, the District shall give public notice of the Superintendent's determination that the Goods or Services or class of Goods or Services are available from only one source. The District shall publish such notice in a manner similar to public notice of Competitive Sealed Bids under ORS 279B.055(4) and NCS-47-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor, and include the date, time, and place that protests are due. The District shall give affected Persons at least seven Days from the date of the notice of the determination that the Goods or Services are available from only one source to protest the sole-source determination.
- (3) **Protest.** An affected Person may protest the Superintendent's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with NCS-47-0710.

**NCS-47-0280 Emergency Procurements**

- (1) **Generally.** The Superintendent may Award a Public Contract as an Emergency Procurement. The Superintendent will document the nature of the emergency and describe the method used for selection of the particular Contractor. See ORS 279B.080.
- (2) **Construction Services.** For an Emergency Procurement of construction services that are not Public Improvements, the District shall ensure competition for a Contract for the Emergency Work that is reasonable and appropriate under the emergency circumstances. In conducting the Procurement, the District

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

shall set a solicitation time period that the District determines to be reasonable under the Emergency circumstances, and may issue Written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity. See NCSD-49-0150.

**SPECIAL PROCUREMENTS (CONTRACTING EXEMPTIONS)**

**NCSD-47-0285 Special Procurements; Purpose and Application**

The District may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085 without using Competitive Sealed Bidding or Competitive Sealed Proposals or other competitive procedures as otherwise required by these Rules. The Contract Review Board must approve Special Procurements. The Contract Review Board may approve the following two types of Special Procurements:

- (1) A "Class Special Procurement" is a Procurement procedure for entering into a series of Contracts over time or for multiple Projects based on the classification of the Contract.
- (2) A "Contract-Specific Special Procurement" is a Procurement procedure for the purpose of entering into a single Contract or a number of related Contracts on a one-time basis or for a single Project.

**NCSD-47-0287 Special Procurements; Request Procedures**

- (1) To seek approval of an additional Special Procurement, the Superintendent shall submit a Written request to the Contract Review Board. The request must describe the contracting procedure, the Goods and Services or class of Goods and Services that are the subject of the Special Procurement, and the circumstances that justify the use of a Special Procurement under the standards set forth in Section (2) of this Rule.
- (2) The Contract Review Board shall review and may approve a request for a Special Procurement if the Contract Review Board finds that the use of the Special Procurement:
  - (a) Is unlikely to encourage favoritism in the Awarding of Public Contracts or to substantially diminish competition for Public Contracts; and
  - (b) (A) Is reasonably expected to result in substantial cost savings to the District or to the public; or  
(B) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with Procurement requirements that would otherwise be applicable to the Procurement under Division 47 of these Rules.
- (3) The District shall give public notice of approval of a Special Procurement in the manner provided in NCSD-47-0300. The notice will describe the Goods or Services or class of Goods or Services subject to the Special Procurement, and shall give affected Persons at least seven Days from the date of notice of the approval of the Special Procurement to protest the Special Procurement.
- (4) An affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and NCSD-47-0700.
- (5) An approved Class Special Procurement shall be added to enumerated Class Special Procurements in NCSD-47-0288.

**NCSD-47-0288 Approved Class Special Procurements**

The Contract Review Board declares the following classes of Contracts for Goods or Services listed in this Section as Class Special Procurements for which Contracts may be Awarded without compliance with the competitive Procurement requirements that would otherwise be applicable to the Procurement under

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Division 47 of these Rules. Unless an alternative Procurement process is particularly specified in these Rules, the selection procedures for such Class Special Procurements shall be as the Superintendent determines will result in a Contract that will best serve the interests of the District. Prior to utilizing a Class Special Procurement, the Superintendent will document in Writing in the Procurement File the reasons why the Contract qualifies as a Class Special Procurement under these Rules, including any required Findings. Except as otherwise provided in this Rule, the School Board must approve any Contracts Awarded pursuant to Special Procurement if the Contract Price exceeds the Superintendent's delegated authority under NCSD-45-0200. The Contract Review Board hereby designates the following classes of Contracts for Special Procurement:

- (1) Advertising Contracts.** The District may purchase advertising in any medium, regardless of the dollar value of the Contract. The District may sell advertising for District publications or activities, regardless of the dollar value of the Contract.
- (2) Equipment Repair/Overhaul.** The District may enter into a Public Contract for equipment repair or overhaul without competitive Procurement, subject to the following conditions:
  - (a)** Where the extent of the repair or overhaul is unknown or not easily identified; or
  - (b)** Where service or parts requirements are unpredictable; or
  - (c)** Service or parts required are for equipment for which specially trained personnel are required, and such personnel are available from only one source; and
  - (d)** Conducting a competitive process is impractical. The District must document in the Procurement File the reasons why a competitive process was deemed to be impractical
- (3) Specifications.**
  - (a) "Or Equal" Specification.**
    - (A)** 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.
    - (B)** The Superintendent is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.
    - (C)** Nothing in this Section may be construed as prohibiting the Superintendent from specifying one or more comparable products as examples of the quality, performance, functionality, or other characteristics of the product needed by the District.
  - (b) Specifying a Particular Make or Product.** A Brand Name Specification may be prepared and used only if the Superintendent determines for a solicitation or a 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 Findings:
    - (A)** That use of a Brand Name Specification is unlikely to encourage favoritism in the Awarding of Public Contracts or substantially diminish competition for Public Contracts;
    - (B)** That use of a Brand Name Specification would result in substantial cost savings to the District;
    - (C)** That there is only one manufacturer or seller of the product of the quality, performance, or functionality required;

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (D) That the equipment or supplies being procured are used in athletic programs or physical education programs; or
- (E) That efficient utilization of existing Goods requires the acquisition of compatible Goods or Services. For the purposes of this Finding, "compatibility" includes, without limitation, technical compatibility, technological equity, and equivalent ease of training, durability, and use. "Compatibility" also includes, without limitation, compatibility among equipment in a standardized technology bundle developed to deliver curriculum in a classroom.

(4) **Copyrighted Materials and Creative Works.** The District may directly purchase copyrighted materials or creative works regardless of dollar value if available from only one source. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new adopted textbooks, workbooks, curriculum kits, on-line curriculum, testing materials, reference materials, books, periodicals, audio and visual media, and non-mass-marketed software. Examples of creative works covered by this Class Special Procurement include, but are not limited to, artwork, music, uncopyrighted writings, and similar works. This class special procurement includes instructional resources (digital resources, educational resources, learning management systems, and open educational resources).

(5) **Insurance and Employee Benefits.** The District may purchase liability, property damage, workers' compensation, and other insurance and insurance services Contracts, and employee benefits, without Competitive Procurement and regardless of dollar amount, by selecting either a vendor directly or by appointing an agent of record. For the purpose of this Special Procurement, "employee benefits" includes, but is not limited to, "employee benefit plans" as defined in ORS 243.105(1), plans provided through the Oregon Educators Benefits Board pursuant to ORS 243.860 through 243.886, flexible benefit plans as defined in ORS 243.221, insurance or other benefit based on life, supplemental medical, supplemental dental, optical, accidental death or disability insurance plans, long-term care insurance, health care coverage to retired officers, employees, spouses, and children, employee assistance plans, and expense reimbursement plans.

(6) **Spot Buys.** This Special Procurement provides a process for the District to procure products that are available for a limited period of time at "lower-than-normal" prices (also referred to as "spot buys").

- (a) Regardless of dollar value and without Competitive Procurement, the District may purchase "spot buys."
- (b) Conditions. The District may procure an unlimited dollar value of products when any of the following conditions are present:
  - (A) A non-exclusive mandatory-use Contract or regularly scheduled Bid process already exists for the item being purchased;
  - (B) The proposed unit price of the item(s) to be purchased is significantly less than a comparable item's price on an existing mandatory-use Contract, recent Bid, or based on obtaining at least three Quotes, and the amount saved exceeds any additional administrative costs incurred to purchase the item using this Special Procurement;
  - (C) The product being purchased has limited availability (i.e., the product may no longer be available or available at the special price upon completion of normal Bid processes); or
  - (D) Any mandatory-use Contract currently in place for the item being purchased contain clauses allowing for the use of this Special Procurement.
- (c) Notwithstanding subsection 6(b) of this Section, the District may not purchase a spot buy if doing so would jeopardize fulfillment of a guaranteed minimum volume under an existing mandatory-use Contract;

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (d) Documentation. Purchases may only be made under this Special Procurement if the Superintendent documents to the Procurement File that the conditions set forth in Section (6)(b) apply to the proposed purchase.
- (e) Notwithstanding NCSO-45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on "spot-buy" Contracts in any dollar amount, but will report the nature and amount of the Contract to the School Board as provided in NCSO-45-0200(6).

**(7) Price Agreements.**

- (a) Price Agreements may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining District requirements for volume discounts, creating standardization among agencies, and reducing lead time for ordering. The Superintendent may enter into Price Agreements to purchase Goods or Services for an anticipated need at a predetermined price, but the Contract must be let by a Competitive Procurement process pursuant to the requirements of these Rules.
- (b) The Superintendent may purchase the Goods and Services from a Contractor Awarded a Price Agreement without first undertaking additional Competitive solicitation up to the amount set forth in the Price Agreement.
- (c) The Superintendent may use the Price Agreement entered into by another Public Agency when the Original Contract was let pursuant to NCSO-46-0400 through NCSO-46-0480;
- (d) The term of the Price Agreement, including renewals, may not exceed the term stated in the original solicitation.

**(8) Purchase of Used Personal Property.** The District may purchase used property or equipment. "Used personal property or equipment" is property or equipment that has been placed in its intended use by a previous owner or user for a time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used" at the time of the District purchase. "Used personal property or equipment" generally does not include property or equipment if the District was the previous user, whether under a lease, as part of a demonstration, trial, or pilot project, or under a similar arrangement. Notwithstanding NCSO-45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for the purchase of used personal property in any dollar amount, but will report the nature and amount of the Contract to the School Board as provided in NCSO-45-0200(6).

**(9) Sale of Used Personal Property.**

- (a) The Superintendent may sell used personal property without obtaining Competitive Bids or Quotes if a liquidation sale would bring in greater revenue to the District than would be gained through Bids. As used in this Section, "surplus personal property" is property or equipment that has been determined to no longer be useful to the District. It may be property or equipment that the District has used for some time and that is fully used up or obsolete. It may be property or equipment that is the natural excess or leftover from a Project, such as cable, wire, carpet, etc., that has been cut or partially used in some manner so that it cannot be returned to the supplier for a refund.
- (b) For sales of surplus property valued at more than \$25,000 per item or lot, the Superintendent must attempt to obtain at least three Competitive Quotes. The Superintendent will keep a Written record of the source and number of Quotes received. If three Quotes are not available, a Written record must be made of the attempt to obtain three Quotes.
- (c) The Superintendent may sell used personal property regardless of price via an electronic auction or sales service including, without limitation, eBay, Craigslist, or other similar Internet-based

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

auctions or marketplaces. If the service does not otherwise provide for a competitive sales process, the Superintendent will establish a minimum Bid, a time period for acceptance of Bids, and will not sell the property unless the Superintendent receives a minimum of three Bids. The sale will be Awarded to the highest Responsible Bidder submitting a Responsive Bid, except that the Superintendent may accept a lower Bid if transportation or other costs associated with collection or delivery of the property would offset the higher Bid amount.

- (d) The Superintendent may sell, sell at a discount, or donate used personal property to another school district, to another Public Body, or to a nonprofit corporation that provides educational, social, or other important services to the District, District students, or families of District students.
- (e) If the Superintendent determines that the used personal property has no market value, or that the market value is so low that the staff time or cost involved in selling the property is likely to exceed the value of the used personal property, the Superintendent may dispose of the property as the Superintendent determines is in the best interest of the District.

**(10) Reverse Auctions.**

- (a) A reverse auction means a process for the purchase of Goods and Services from the lowest Bidder. The District must conduct reverse auctions by first publishing a solicitation that describes its requirements and Contract terms and conditions. Then the District must solicit online Bids from all interested Bidders through an Internet-based program. The solicitation must set forth a start and end time for Bids and specify the following type of information to be disclosed to Bidders during the reverse auction:
  - (A) The prices of the other Bidders or the price of the most Competitive Bidder;
  - (B) The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher");
  - (C) The scores of the Bidders if the District chooses to use a scoring model that weighs non-price factors in addition to price; or
  - (D) Any combination of (A), (B), and (C) above. Before the reverse auction commences, Bidders must be required by the District to assent to the Contract terms and conditions, either in Writing or by an Internet "click" agreement. The Bidders then compete for the Award of a Contract by offering successively lower prices, informed by the price(s), ranks, and scores, separately or in any combination thereof, disclosed by the District. The identity of the Bidders must not be revealed during this process. Only the successively lower price(s), ranks, scores, and related details, separately or in any combination thereof, will be revealed to the participants. The District may cancel this solicitation if the District determines that it is in the District's best interest. At the end of this Bidding process, the District must Award any potential Contract to the lowest Responsible Bidder, or in the case of multiple Awards, lowest Responsible Bidders pursuant to ORS 279A.055(10)(b). This process allows the District to test and determine the suitability of the Goods and Services before making the Award.

**(11) Software and Hardware Maintenance and Upgrades.** The Superintendent may enter into a Contract and may renew existing Contracts for proprietary information technology and telecommunications services, and hardware or software maintenance upgrades and license renewals where the efficient utilization of existing equipment or systems requires the acquisition of compatible Goods or Services, or where Goods or Services are available from only one source. The Superintendent must make a Finding supporting this conclusion as required in NCS D NCS D-47-0275 or NCS D-47-0288(3)(b) . In making this determination, the Superintendent may consider the functionality of the existing system with upgrades or continued service, long-term cost, ease of use, integration with existing technology or systems, or other factors.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(12) Hazardous Material Abatement.**

- (a) The Superintendent may enter into Public Contracts without Competitive Procurement, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted by the Oregon Department of Environmental Quality ("DEQ") under ORS Chapter 466, especially ORS 466.605 through 466.680. In exercising its authority under this exemption.
- (b) The Superintendent must, to the extent reasonable under the circumstances, encourage competition by attempting to obtain informal Quotes from potential suppliers of Goods and Services.
- (c) The department responsible for managing or coordinating the clean-up must submit a Written description of the circumstances that require the clean-up and a copy of the DEQ order for the clean-up, along with a requisition authorizing the Contract, to the District Purchasing Department.
- (d) The District Procurement and Distribution Department must record the measures taken under Section (12)(b) of this Rule to encourage competition, the amount of the Quotes or Proposals obtained, if any, and the reason for selecting the Contractor to whom Award is made.
- (e) The District may not contract pursuant to this exemption in the absence of an order from the DEQ to clean up a site that includes a time limit that would not allow the District to hire a Contractor under normal Competitive Procurement procedures. Goods and Services to perform other hazardous material removal or clean-up will be purchased in accordance with normal Competitive Procurement procedures as described in these Rules and policies.
- (f) Notwithstanding NCSD-45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for hazardous material abatement in any dollar amount, but will report the nature and amount of the Contract to the School Board as provided in NCSD-45-0200.

**(13) Purchase of Products for Resale to Students and Staff.** The District may purchase personal property for resale to students and staff without Competitive Procurement and regardless of dollar amount.

**(14) Radio and Television Contracts for Student Activities.**

- (a) Generally. The Superintendent must use a Competitive Procurement method (e.g., an Invitation to Bid or Request for Proposals) to obtain Written Bids or Proposals to provide commercial radio and television Services for any student activity or District program, including athletics, if the value of the Services totals more than \$150,000, regardless of whether the District is paying or receiving revenue under the Contract.
- (b) Specific and Ancillary Services. The Solicitation Document used to invite Bids or Proposals to furnish radio or television Services to District programs must include the minimum Bidder or qualifications and Service specifications and will conform to the other requirements of the "Request for Proposal" Rule herein. The Solicitation Document may invite interested Bidders or Proposers to offer other ancillary Services. Each ancillary Service, if offered, must be accompanied by a dollar value that reflects the current purchase price for the Service and a description of the Service and its use and application.
- (c) Term of Contract. A Contract for radio or television Services may be Awarded for up to five years.

**(15) Donated Materials or Services.** The District may directly negotiate a Contract with a Person to perform Services or provide Goods or Services regardless of dollar amount, if:

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a) The Person has agreed to donate all or a significant portion of the materials or Services necessary to perform the Work; and
- (b) The Person enters into a license or agreement with the District whereby the Person agrees to comply with the Public Contract requirements applicable to the particular Project and any requirements that the District deems necessary or beneficial to protect the District.

**(16) Manufacturer Direct Supplies.** The District may purchase Goods directly from a manufacturer if a large-volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a Contract-by-Contract basis and are not Price Agreements.

**(17) Purchases through Federal Programs.** The District may purchase certain authorized Goods and Services through General Service Administration federal programs or federal contracts, provided that the District has federal authorization to purchase through the federal program and the federal contract was solicited in a manner substantially equivalent to the requirements of NCSD Division 47 and the Public Contracting Code.

**(18) Purchases under Contracts Solicited by Nonprofit Procurement Organizations of Which the District is a Member.** The District may purchase Goods and/or Services under a Contract or Procurement solicited by a Nonprofit Procurement Organization of which it is a member. For the purposes of this Special Procurement, such a Procurement Organization will be considered to be an "Administering Contracting Agency" and a "Contracting Purchasing Group" under NCSD-46-0400 through 46-0480. Such Procurement must otherwise comply with the requirements for permissive, joint, or Interstate Cooperative Procurements, as applicable, pursuant to NCSD-46-0400 through NCSD-46-0480.

**(19) Secure, Specialized Transportation for Special Needs Students.** The Superintendent may contract directly for transportation services for special needs students where such transportation need requires a transportation service with skills or equipment tailored to the needs of the particular special needs student or class of special needs students. For the purposes of this Special Procurement, a "special needs student" is a student with special physical, mental, developmental, or security needs such that District transportation, public transportation, or other private general transportation providers (taxicabs, town car services, charter services, etc.) cannot provide safe, beneficial, or timely service. Notwithstanding NCSD-45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on a Contract for secure, specialized transportation, in any dollar amount, and will report the nature and amount of the Contract to the School Board as provided in NCSD-45-0200.

**(20) FSCP.** The Superintendent may establish an FSCP for Goods, Services, or construction services that are not Public Improvements for a particular class of Services, where the need for such Services is ongoing in nature, where it is difficult to anticipate the Service need, time, amount, or availability of Contractors, or where Service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these Rules. An FSCP shall comply with the following requirements:

- (a) Solicitation to Create an FSCP. An FSCP for Goods or Services shall be solicited based on the total cost of the Work estimated to be Awarded through the FSCP during its life. If the total amount of the Work is estimated to be over \$150,000, the Superintendent shall use a Competitive Sealed Proposals process as provided in NCSD-47-0260. If the total amount of the Work is \$150,000 or less, the FSCP may be solicited pursuant to the Intermediate Procurement process set forth in NCSD-47-0270.
- (A) The Superintendent shall document the reasons for establishing an FSCP consistent with this Rule in the Procurement File. This documentation must be reviewed and approved by the Director of Business Operations as demonstrating that the procurement qualifies for use of an FSCP under these Rules.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (B) The solicitation shall describe the class of Contracts that can be Awarded to Contractors in the FSCP. The District may not Award Contracts outside the designated class of Contracts to the FSCP.
- (C) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.
- (D) The solicitation may request a binding Price Quote or rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.
- (E) The solicitation may set or limit the value of the Work to be performed by the FSCP.
- (b) Contracting for Work from an FSCP. Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform certain Services or provide certain Goods within the established scope of the Work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual Services or Goods will be offered, negotiated, and Awarded sequentially to Contractors on the FSCP list. Once the Superintendent has offered a Contract to all of the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer a Contract to Contractors out of sequence in the following circumstances:
  - (A) The Contractor that is next on the list declines or is unavailable during the time period needed.
  - (B) Contract negotiations with the next-listed Contractor are not successful.
  - (C) The Project is for Goods or Services that is a continuation of, addition to, or connected with Goods or Services previously performed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to Award the Contract to the Contractor that performed the prior Work or provided the prior Goods.
  - (D) The nature of the Project is such that the Superintendent determines that an additional analysis of Contractor capability or capacity is required. In order to make this determination, the Superintendent shall conduct an Intermediate Procurement pursuant to NCSD-47-0270 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in Writing in the Procurement File.

- (c) An FSCP established under this Rule will expire after three years from the date of Closing of the solicitation, unless reestablished as provided in this Rule.
- (d) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of Work or orders, or any Work or orders at all.
- (e) The establishment of an FSCP does not preclude the Superintendent from procuring Goods or Services that would otherwise fall within the FSCP from other Contractors through any other Procurement method authorized under these Rules.
- (f) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, inventory, or other capability needed to perform the class of Work or provide the required Goods or Services.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (g) If an FSCP for construction services is reasonably estimated to include Public Works Projects that will total over \$50,000 during the life of the FSCP, Public Works Contracts Awarded to Contractors on an FSCP list shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

**(21) Contracts for Price-Regulated Items.** The Superintendent may contract for the direct purchase of Goods or Services where the rate or price for the Goods or Services being purchased is established by federal, state, or local regulatory authority without competitive solicitation.

**(22) Service Monopoly.** The Superintendent may enter into Contracts for Work by a utility or other entity that has been granted a monopoly for Services for a specific geographic area or provision of a type of Service and by agreement the utility or entity is either entitled to or is required to perform the required Work.

**(23) Investment Contracts.** The Superintendent may contract for the investment of District funds or the borrowing of funds by the District when such investment or borrowing is contracted pursuant to statute, rule, or constitution. The Superintendent shall use competitive methods where possible to achieve the best value for the District.

**(24) Rating Agency Contracts.** The District may purchase the Services of Moody's Investors Service, Standard & Poor's, or similar rating agencies.

**(25) Gasoline, Diesel Fuel, Heating Oil, Lubricants, and Asphalt.** The Superintendent may purchase gasoline, diesel fuel, heating oil, lubricants, and asphalt using the Intermediate Procurement Process set forth in NCSD-47-0270 regardless of dollar amount.

**(26) Expedited Contracting Process in Order to Access State, Federal, or Grant Funding.** The Superintendent may waive any or all of the solicitation procedures under this Division 47 in the following circumstances:

- (a) The state or federal government or a granting entity has adopted a funding program or made funding available to assist the District in purchasing Goods and/or Services and has attached a time deadline to have a Contract in place or underway or completed in order for the District to access or be eligible for those funds.
- (b) The Superintendent determines that compliance with the solicitation procedures in this Rule could jeopardize the District's ability to access or be eligible for such funding under the timeline established by the state or federal government or granting entity.
- (c) The Superintendent provides for an alternative contracting process.
- (d) The reasons for and extent of the waiver are documented in the Procurement File.
- (a) Notwithstanding NCSD-45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on Contracts subject to this exemption in any dollar amount, but will report the nature and amount of the Contract to the School Board if the Contract is over the Superintendent's delegated authority as set forth in NCSD-45-0200(4)(b)(A).

## **PROCUREMENT PROCESS**

### **NCSD-47-0300 Public Notice of Solicitation Documents**

**(1) Notice of Solicitation Documents; Fee.** The District shall provide public notice of every Solicitation Document in accordance with Section (2) of this Rule. The District may give additional notice using any method it determines appropriate to foster and promote competition, including:

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the District's Procurements;
  - (b) Placing notice on the OregonBuys website; or
  - (c) Placing notice on the District's Internet World Wide Web site or designated electronic system.
- (2) **Advertising.** The District shall advertise every notice of a Solicitation Document as follows:
- (a) The District shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5) in at least one newspaper of general circulation in the District and in as many other publications as the District may determine; or
  - (b) The District may publish the advertisement for Offers on the OregonBuys website or an electronic system other than OregonBuys instead of publishing notice in a newspaper of general circulation as authorized by ORS 279B.055(4)(c) when the District determines that doing so is more cost effective.
  - (c) Notice shall be given at least seven Days prior to the solicitation Closing day.
- (3) **Content of Advertisement.** All advertisements for Offers shall set forth:
- (a) Where, when, how, and for how long the Solicitation Document may be obtained;
  - (b) A general description of the Goods or Services to be acquired;
  - (c) The interval between the first date of notice of the Solicitation Document given in accordance with Sections (2)(a) or (b) above and Closing, which shall not be less than seven Days for an Invitation to Bid and 14 Days for a Request for Proposals, unless the District determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with Section (2)(a) or (b) above and Closing be less than seven Days as set forth in ORS 279B.055(4)(f). The District shall document the specific reasons for the shorter public notice period in the Procurement File;
  - (d) The date that Persons must file applications for prequalification if prequalification is a requirement, and that the class of Goods or Services is one for which Persons must be prequalified;
  - (e) The office where Contract terms, conditions, and Specifications may be reviewed;
  - (f) The name, title, and address of the individual authorized by the District to receive Offers;
  - (g) The scheduled Opening; and
  - (h) Any other information the District deems appropriate.
- (4) **Posting Advertisement for Offers.** The District shall post a copy of each advertisement for Offers at the principal business office of the District. An Offeror may request a copy of the advertisement for Offers.
- (5) **Fees.** The District may charge a fee or require a deposit for the Solicitation Document.
- (6) **Notice of Addenda.** The District shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with NCSD-47-0430.

**NCSD-47-0310 Bids or Proposals are Offers**

- (1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (a) In Competitive Bidding and Competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the District's acceptance for the period specified in NCS-47-0480. The District may elect to accept the Offer at any time during the specified period, and the District's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
  - (b) Notwithstanding the fact that a Competitive Proposal is a "Firm Offer" for the period specified in NCS-47-0480, the District may elect to discuss or negotiate certain contractual provisions, as identified in these Rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the Rules or the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the Rules or the Solicitation Document have reserved for negotiation.
- (2) **Contingent Offers.** Except to the extent that the Proposer is authorized to propose certain terms and conditions pursuant to NCS-47-0262, a Proposer must not make its Offer contingent upon the District's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- (3) **Offeror's Acknowledgment.** By Signing and returning the Offer, the Offeror acknowledges that it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposers to propose alternative terms or conditions under NCS-47-0261, the Offeror's Offer shall include any nonnegotiable terms and conditions, any proposed terms and conditions offered for negotiation upon and to the extent accepted by the District in Writing, and Offeror's agreement to perform the scope of Work and meet the performance standards set forth in the final negotiated scope of Work.

**NCS-47-0320 Facsimile Bids and Proposals**

- (1) **District Authorization.** The District may authorize Offerors to submit Facsimile Offers. If the District determines that Bid or Proposal security is or will be required, the District should not authorize Facsimile Offers unless the District has another method for receipt of such security. Prior to authorizing the submission of Facsimile Offers, the District must determine that the District's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the District must establish administrative procedures and controls:
- (a) To receive, identify, record, and safeguard Facsimile Offers;
  - (b) To ensure timely delivery of Offers to the location of Opening; and
  - (c) To preserve the Offers as sealed.
- (2) **Provisions to be Included in Solicitation Document.** In addition to all other requirements, if the District authorizes a Facsimile Offer, the District will include in the Solicitation Document the following:
- (a) A provision substantially in the form of the following: "A 'Facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the District via a facsimile machine";
  - (b) A provision substantially in the form of the following: "Offerors may submit Facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";
  - (c) A provision that requires Offerors to Sign their Facsimile Offers;

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (d) A provision substantially in the form of the following: "The District reserves the right to Award the Contract solely on the basis of a Facsimile Offer." However, upon the District's request the apparent successful Offeror must promptly submit its complete original Signed Offer;
- (e) The data and compatibility characteristics of the District's receiving facsimile machine as follows:
  - (A) Telephone number; and
  - (B) Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.
- (f) A provision that provides that the District is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to, the following:
  - (A) Receipt of garbled or incomplete documents;
  - (B) Availability or condition of the receiving facsimile machine;
  - (C) Incompatibility between the sending and receiving facsimile machine;
  - (D) Delay in transmission or receipt of documents;
  - (E) Failure of the Offeror to properly identify the Offer documents;
  - (F) Illegibility of Offer documents; and
  - (G) Security and confidentiality of data.

**NCSD-47-0330 E-Procurement**

**(1) Electronic Procurement Authorized.**

- (a) The District may conduct all phases of a Procurement, including, without limitation, the posting of Electronic Advertisements and the receipt of electronic Offers, by electronic methods if and to the extent the District specifies in a Solicitation Document, a Request for Quotes, or any other Writing that instructs Persons how to participate in the Procurement.
- (b) The District must open an Electronic Offer in accordance with electronic security measures in effect at the District at the time of its receipt of the Electronic Offer. Unless the District provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.
- (c) The District's use of electronic Signatures must be consistent with applicable statutes and Rules. The District must authorize, and may limit the use of, electronic methods of conducting a Procurement based on the best interests of the District, as determined by the District.
- (d) If the District determines that Bid or Proposal security is or will be required, the District should not authorize Electronic Offers unless the District has another method for receipt of such security.

**(2) Rules Governing Electronic Procurements.** The District must conduct all portions of an Electronic Procurement in accordance with these Division 47 Rules, unless otherwise set forth in this Rule.

**(3) Preliminary Matters.** As a condition of participation in an Electronic Procurement, the District may require potential Contractors to register with the District before the date and time on which the District will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the District may use to attribute, authenticate, or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**(4) Offer Process.** The District may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the District specifies that Persons may submit multiple Electronic Offers during a specified period of time, the District must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the District will accept Electronic Offers for a period of time other than at the designated date and time that the District will first receive Electronic Offers, the District must begin to accept real time Electronic Offers on an Electronic Procurement System, and must continue to accept Electronic Offers in accordance with Section (5)(b) of this Rule until the date and time specified by the District, after which the District will no longer accept Electronic Offers.

**(5) Receipt of Electronic Offers.**

- (a)** When the District conducts an Electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the District must receive the Electronic Offers in accordance with these Division 47 Rules.
- (b)** When the District specifies that Persons may submit multiple Electronic Offers during a period of time, the District must accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:
  - (A)** Following receipt of the first Electronic Offer after the date and time that the District first receives Electronic Offers, the District must post and update on a real-time basis:
    - (i)** The prices of the other Bidders or the price of the most Competitive Bidder;
    - (ii)** The rank of each Bidder (e.g., (i) "winning" or "not winning" or (ii) "1st, 2nd, or higher";
    - (iii)** The scores of the Bidders if the District chooses to use a scoring model that weighs non-price factors in addition to price; or
    - (iv)** Any combination of (i), (ii), and (iii) above. At any time before the date and time after which the District will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.
  - (B)** A Person may not increase the price set forth in an Electronic Offer after the date and time that the District first accepts Electronic Offers.
  - (C)** A Person may withdraw an Electronic Offer only in compliance with these Division 47 Rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

**(6) Failure of the E-Procurement System.** In the event of a failure that interferes with the ability of Persons to submit Electronic Offers, protest, or to otherwise participate in the Procurement, the District may cancel the Procurement in accordance with NCSD-47-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the system becomes available.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**BID AND PROPOSAL PREPARATION**

**NCSD-47-0400 Offer Preparation**

- (1) **Instructions.** Offerors must submit and Sign their Offers in accordance with the instructions set forth in the Solicitation Document. Offerors must initial any corrections or erasures to their Offers.
- (2) **Forms.** Offerors must submit their Offer on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.
- (3) **Documents.** Offerors must provide the District with all documents and Descriptive Literature required by the Solicitation Document.

**NCSD-47-0410 Offer Submission**

- (1) **Product Samples and Descriptive Literature.** The District may require Product Samples or Descriptive Literature if the District determines either is necessary or desirable to evaluate the quality, features, or characteristics of an Offer. The District will dispose of Product Samples, or make them available for the Offeror to retrieve, in accordance with the Solicitation Document.
- (2) **Identification of Offers.**
  - (a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked. If the District permits Electronic Offers or Facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or Facsimile Offers in accordance with these Division 47 Rules and the instructions set forth in the Solicitation Document. The District will not consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.
  - (b) The Offeror is responsible for submitting Offers in the manner, format, and to the delivery point as required in the Solicitation Document..
- (3) **Receipt of Offers.** Offerors are responsible for ensuring that the District receives their Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

**NCSD-47-0420 Pre-Offer Conferences**

- (1) **Purpose.** The District may hold pre-Offer conferences with prospective Offerors prior to Closing to explain the Procurement requirements, obtain information, or conduct site inspections.
- (2) **Required Attendance.** The District may require attendance at the pre-Offer conference as a condition for making an Offer.
- (3) **Scheduled Time.** If the District holds a pre-Offer conference, it must be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by the District's representative at the pre-Offer conference do not change the Solicitation Document unless the District confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **District Announcement.** The District must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with NCSD-47-0255(2) or NCSD-47-0260(2).

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**NCSD-47-0430 Addenda to Solicitation Document**

- (1) **Issuance; Receipt.** The District may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the District otherwise specifies in the Addenda.
- (2) **Notice and Distribution.** The District must notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document must specify how the District will provide notice of Addenda and how the District will make the Addenda available before Closing, and at each subsequent step or phase of evaluation if the District will engage in a Multi-step Competitive Sealed Bidding process in accordance with NCSD-47-0257, or a Multi-tiered or Multi-step Competitive Sealed Proposals process in accordance with NCSD-47-0261. The following is an example: "The District will not mail notice of Addenda, but will post public notice of any Addenda on the OregonBuys Web site. Offerors should frequently check the OregonBuys Web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of Closing."
- (3) **Timelines; Extensions.**
- (a) The District must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The District may extend the Closing if the District determines that prospective Offerors need additional time to review and respond to Addenda. Except to the extent justified by a countervailing public interest, the District must not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
  - (b) Notwithstanding Section (3)(a) of this Rule, an Addendum that modifies the evaluation criteria, selection process, or procedure for any step or phase of competition under a Multi-step Sealed Bidding or Multi-step Sealed Proposals process issued in accordance with NCSD-47-0257 or NCSD-47-0261 must be issued no fewer than five Days before the beginning of that step or phase of competition, unless the District determines that a shorter period is sufficient to allow the Offerors to prepare for that step or phase of competition. The District must document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next step or phase of competition favors or disfavors any particular Proposer or Proposers.
- (4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in NCSD-47-0730, by the close of the District's next business Day after issuance of the Addendum, or up to the last Day allowed to submit a request for change or protest of the solicitation under NCSD-47-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with NCSD-47-0730, then the District may consider an Offeror's request for change or protest to the Addendum only, and the District shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this Section (4) of this Rule, the District is not required to provide a protest period for Addenda issued after the initial Closing during a Multi-tiered or Multi-step Procurement process conducted pursuant to ORS 279B.055 or 279B.060.

**NCSD-47-0440 Pre-Closing Modification or Withdrawal of Offers**

- (1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror must prepare and submit any modification to its Offer to the District in accordance with NCSD-47-0400 and NCSD-47-0410, unless otherwise specified in the Solicitation Document. Any modification must include the

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror must mark the submitted modification as follows:

- (a) Bid (or Proposal) Modification; and
- (b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

**(2) Withdrawals.**

- (a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the District prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing upon presentation of appropriate identification and evidence of authority satisfactory to the District.
- (b) The District may release an unopened Offer withdrawn under Section (2)(a) of this Rule to the Offeror or its authorized representative, after voiding any date and time-stamp mark.
- (c) The Offeror must mark the Written request to withdraw an Offer as follows:
  - (A) Bid (or Proposal) Withdrawal; and
  - (B) Solicitation Document Number (or other identification as specified in the Solicitation Document).

**(3) Documentation.** The District must include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement File.

**NCSD-47-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers**

**(1) Receipt.** The District must electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The District must not open the Offer or modification, but must maintain it as confidential and secure until Opening. If the District inadvertently opens an Offer or a modification prior to the Opening, the District must return the Offer or modification to its secure and confidential state until Opening. The District must document the resealing for the Procurement File (e.g., "District inadvertently opened the Offer due to improper identification of the Offer").

**(2) Opening and Recording.** The District must publicly open Offers including any modifications made to the Offer pursuant to NCSD-47-0440(1). In the case of Invitations to Bid, to the extent practicable, the District must read aloud the name of each Bidder and such other information as the District considers appropriate. However, the District may withhold from disclosure information marked by the Offeror as "confidential" or a "trade secret" in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the District will not read Offers aloud.

**NCSD-47-0460 Late Offers, Late Withdrawals, and Late Modifications**

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The District must not consider late Offers, withdrawals, or modifications except as permitted in NCSD-47-0470 or NCSD-47-0261.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**NCSD-47-0470 Mistakes**

**(1) General.** To protect the integrity of the Competitive Procurement process and to ensure fair treatment of Offerors, the District should carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

**(2) District Treatment of Mistakes.** The District must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in an Offer after Opening but before the Award of the Contract, the District may take the following action:

- (a)** The District may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:
  - (A)** Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
  - (B)** Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer evidencing an intent to be bound; and
  - (C)** Acknowledge receipt of an Addendum to the Solicitation Document, provided: it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality, or delivery.
- (b)** The District may correct a clerical error if the error is evident on the face of the Offer, or other documents submitted with the Offer, and the Offeror confirms the District's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices will prevail over extended prices in the event of a discrepancy between extended prices and unit prices.
- (c)** The District may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:
  - (A)** The nature of the error;
  - (B)** That the error is not a minor informality under this Section or an error in judgment;
  - (C)** That the error cannot be corrected or waived under Section (b) of this Rule;
  - (D)** That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
  - (E)** That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
  - (F)** That the Offeror will suffer substantial detriment if the District does not grant the Offeror permission to withdraw the Offer;
  - (G)** That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and
  - (H)** That the Offeror promptly gave notice of the claimed error to the District.
- (d)** The criteria in Section (2)(c) of this Rule must determine whether the District will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question whether the District will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or Proposal security), or without liability to the District based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually Awarded by the District,

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

whether by Award to the next lowest Responsive and Responsible Bidder, the most advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

- (3) **Rejection for Mistakes.** The District must reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents accompanying the Offer.
- (4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may only withdraw its Offer or rescind a Contract entered into pursuant to this Division 47 to the extent permitted by applicable law.

**NCS-47-0480 Time for District Acceptance**

An Offeror's Offer is a Firm Offer, irrevocable, valid, and binding on the Offeror for not less than 60 Days following Closing unless otherwise specified in the Solicitation Document.

**NCS-47-0490 Extension of Time for Acceptance of Offer**

The District may request, orally or in Writing, that Offerors extend, in Writing, the time during which the District may consider their Offer(s). If an Offeror agrees to such extension, the Offer must continue as a Firm Offer, irrevocable, valid, and binding on the Offeror for the agreed-upon extension period.

**QUALIFICATIONS AND DUTIES**

**NCS-47-0500 Responsibility of Offerors**

- (1) **Determination.** Before Awarding a Contract, the District must determine that the Offeror submitting the lowest Bid or Proposal or most advantageous Offer is Responsible. The District must use the standards set forth in ORS 279B.110 and NCS-47-0640(1)(c)(F) to determine if an Offeror is Responsible. In the event the District determines an Offeror is not Responsible, it must prepare a Written determination of non-Responsibility as required by ORS 279B.110 and must reject the Offer.

**NCS-47-0525 Qualified Products Lists**

- (1) **Authority.** The District may develop and maintain a qualified products list pursuant to ORS 279B.115 in instances in which the testing or examination of Goods before initiating a Procurement is necessary or desirable in order to best satisfy the requirements of the District. For purposes of this Section, "Goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.
- (2) **Notice.** In the initial development of any qualified products list, the District shall give public notice, in accordance with NCS-47-0300, of the opportunity for potential Contractors, sellers, or suppliers to submit Goods for testing and examination to determine their acceptability for inclusion on the list, and may solicit in Writing representative groups of potential Contractors, sellers, or suppliers to submit Goods for the testing and examination. Any potential Contractor, seller, or supplier, even though not solicited, may offer its Goods for consideration.
- (3) **Inclusion to be Based Upon Tests or Examinations.** The District's inclusion of Goods on a qualified products list shall be based on the results of tests or examinations. Notwithstanding any provision of ORS 192.410 through 192.505, the District may make the test or examination results public in 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. Notwithstanding any provision of ORS 192.410 through 192.505, the District may keep confidential trade secrets, test data, and similar

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

information provided by a potential Contractor, seller, or supplier if so requested in Writing by the potential Contractor, seller, or supplier.

**(4) List Does Not Constitute Prequalification.** The inclusion of Goods on a qualified products list does not constitute and may not be construed as a prequalification under ORS 279B.120 and 279B.125 of any prospective Contractor, seller, or supplier of Goods on the qualified products list.

**NCS-47-0550 Prequalification of Prospective Offerors; Pre-negotiation of Contract Terms and Conditions**

**(1) Prequalification of Prospective Offerors.** Pursuant to ORS 279B.120 and 279B.125, the District may prequalify prospective Bidders or Proposers to submit Bids or Proposals for Public Contracts to provide particular types of Goods or Services.

**(2) Notice of Prequalification.** The District shall, in response to the receipt of a prequalification application submitted under Section (1) of this Rule, notify the prospective Bidder or Proposer whether the prospective Bidder or Proposer is qualified based on the standards of responsibility listed in Section (7), the type and nature of Contracts that the prospective Bidder or Proposer is qualified to compete for and the time period for which the prequalification is valid. If the District does not prequalify a prospective Bidder or Proposer as to any Contracts covered by the prequalification process, the notice must specify which of the standards of responsibility listed in Section (7) the prospective Bidder or Proposer failed to meet. Unless the reasons are specified, the prospective Bidder or Proposer shall be deemed to have been prequalified in accordance with the application.

**(3) Revocation of Prequalification.** If the District subsequently discovers that a prospective Bidder or Proposer that prequalified under Sections (1) and (2) of this Rule is no longer qualified, the District may revoke the prequalification upon reasonable notice to the prospective Bidder or Proposer, except that a revocation is invalid as to any Contract for which an advertisement for Bids or Proposals has already been issued. Notwithstanding this prohibition against revocation of prequalification, the District may determine that a prequalified Offeror is not Responsible prior to Contract Award.

**(4) Application.** When the District permits or requires prequalification of Bidders or Proposers, a prospective Bidder or Proposer who wishes to prequalify shall submit a prequalification application to the District on a form prescribed by the District. Upon receipt of a prequalification application, the District shall investigate the prospective Bidder or Proposer as necessary to determine whether the prospective Bidder or Proposer is qualified. The determination shall be made in less than 30 Days, if practicable, if the prospective Bidder or Proposer requests an early decision to allow the prospective Bidder or Proposer as much time as possible to prepare a Bid or Proposal for a Contract that has been advertised. In making its determination, the District shall consider only the applicable standards of responsibility listed in Section (7). The District shall promptly notify the prospective Bidder or Proposer whether the prospective Bidder or Proposer is qualified.

**(5) Contents of Notice.** If the District finds that a prospective Bidder or Proposer is qualified, the notice must state the type and nature of Contracts that the prospective Bidder or Proposer is qualified to compete for and the period of time for which the prequalification is valid. If the District finds that the prospective Bidder or Proposer is not qualified as to any Contracts covered by the Rule, resolution, ordinance, or other regulation, the notice must specify the reasons given under Section (7) below. To be entitled to a hearing under NCS-47-0760, a prospective Bidder or Proposer shall, within three business Days after receipt of the notice, notify the District that the prospective Bidder or Proposer demands a hearing under NCS-47-0760.

**(6) Revocation or Reissuance Process.** If the District has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified prospective Bidder or Proposer and that the prospective Bidder or Proposer is no longer qualified or is less qualified, the District may revoke or may

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

revise and reissue the prequalification after reasonable notice to the prequalified prospective Bidder or Proposer. The notice must specify the reasons given under Section (2) for revocation or revision of the prequalification of the prospective Bidder or Proposer and inform the prospective Bidder or Proposer of the right to a hearing under NCSD-47-0760. To be entitled to a hearing under NCSD-47-0760, a prospective Bidder or Proposer shall, within three business Days after receipt of the notice, notify the District that the prospective Bidder or Proposer demands a hearing under NCSD-47-0760. A revocation or revision does not apply to any Contract for which an advertisement for Bids or Proposals was issued before the date the notice of revocation or revision was received by the prequalified prospective Bidder or Proposer.

**(7) Standards of Responsibility.** In determining whether a Bidder or Proposer has met the standards of responsibility pursuant to ORS 279B.110(2), the District shall consider whether a Bidder or Proposer has:

- (a) Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Bidder or Proposer to meet all contractual responsibilities;
- (b) A satisfactory record of performance. The District shall document the record of performance of a Bidder or Proposer if the District finds the Bidder or Proposer non-responsible under this Section;
- (c) A satisfactory record of integrity. The District shall document the record of integrity of a Bidder or Proposer if the District finds the Bidder or Proposer non-responsible under this Section;
- (d) Qualified legally to contract with the District;
- (e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a Bidder or Proposer fails to promptly supply information requested by the District concerning responsibility, the District shall base the determination of responsibility on any available information or may find the Bidder or Proposer non-responsible; and
- (f) Not been debarred by the District under NCSD-47-0575.

**(8) Pre-negotiation.** The District may pre-negotiate some or all Contract terms and conditions including prospective Proposer Contract forms such as license agreements, maintenance and support agreements, or similar documents for use in future Procurements. Such pre-negotiation of Contract terms and conditions (including prospective Proposer forms) may be part of the prequalification process of a Proposer in Section 1 or the pre-negotiation may be a separate process. Unless required as part of the prequalification process, the failure of the District and the prospective Proposer to reach agreement on pre-negotiated Contract terms and conditions does not prohibit the prospective Proposer from responding to Procurements. The District may agree to different pre-negotiated Contract terms and conditions with different prospective Proposers. When the District has pre-negotiated different terms and conditions with Proposers or, when permitted, Proposers offer different terms and conditions, the District may consider the terms and conditions in the Proposal evaluation process.

**NCSD-47-0560 Request for Qualifications ("RFQ")**

For purposes of this Section, an RFQ may be used without the RFQ constituting a prequalification pursuant to NCSD-47-0550, if the District establishes the RFQ to determine whether competition exists to perform the needed Services or to establish a nonbinding, open list of qualified Contractors in addition to the general public and in order to expand the pool of qualified Contractors, prior to issuing an RFP. If the District establishes a closed, exclusive, or binding list of qualified Contractors, then the District must comply with Section (1) of this Rule. The District is not required to issue an RFQ and may elect to forego using an RFQ before issuing an RFP.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(1) **Content of RFQ.** At a minimum, the RFQ must describe the particular specialty desired, the qualifications the Contractor(s) must have in order to be considered, and the evaluation factors and their relative importance. The RFQ may require information including, but not limited to: the Contractor's particular capability to perform the required Services; the number of experienced staff available to perform the required Services, including specific qualifications and experience of personnel; a list of similar services the Contractor has completed, with references concerning past performance; and any other information deemed necessary by the District to evaluate Contractor qualifications. All RFQs must:

- (a) Be in Writing;
- (b) Provide that the District may, at any time during the solicitation process, reject any or all Proposals or cancel the solicitation without liability if it is in the public interest to do so; and
- (c) Provide that the District is not responsible for any costs incurred by Proposers while submitting Proposals, and that all Proposers who respond to solicitations do so solely at their own expense, unless compensation is expressly provided for in the Solicitation Document.

(2) **Pre-Submission Meeting.** A qualifications pre-submission meeting, voluntary or mandatory, may be held for all interested Contractors to discuss the proposed Services. The RFQ must include the date, time, and place of the meeting(s).

(3) **Notice and Opportunity to Submit RFQ.** Unless the RFQ establishes that competition does not exist or unless the solicitation process is canceled or all qualification statements are rejected, all respondents who met the published qualifications must receive a notice, or other materials as appropriate, in addition to the general public, of any required Services and have an opportunity to submit a Proposal in response to the District's subsequent RFP.

**NCSD-47-0575 Debarment of Prospective Offerors**

(1) **Generally.** The District may debar prospective Offerors for the reasons of discriminating against a subcontractor in the Awarding of a Contract because the subcontractor is a minority, women or emerging small business enterprise as set forth in ORS 279A.110, or after providing notice and the opportunity for hearing as set forth in Sections (5)-(8).

(2) **Responsibility.** Notwithstanding the limitation on the term for debarment in ORS 279B.130(1)(b), the District may determine that a previously debarred Offeror is not Responsible prior to Contract Award.

(3) **Imputed Knowledge.** The District may attribute improper conduct of a Person or their affiliate or affiliates having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) **Limited Participation.** The District may allow a debarred Person to participate in solicitations and Contracts on a limited basis during the debarment period upon Written determination that participation is advantageous to the District. The determination must specify the factors on which it is based and define the extent of the limits imposed.

(5) **Debarment Process.** The District may debar a prospective Bidder or Proposer from consideration for Award of the District's Contracts for the reasons listed in Section (6) of this Rule after providing the prospective Bidder or Proposer with notice and a reasonable opportunity to be heard.

- (a) The District may not debar a prospective Bidder or Proposer under this Section for more than three years.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (6) **Reasons for Debarment.** A prospective Bidder or Proposer may be debarred from consideration for Award of the District's Contracts if:
- (a) The prospective Bidder or Proposer has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract.
  - (b) The prospective Bidder or Proposer has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the prospective Bidder's or Proposer's responsibility as a Contractor.
  - (c) The prospective Bidder or Proposer has been convicted under state or federal antitrust statutes.
  - (d) The prospective Bidder or Proposer has committed a violation of a Contract provision that is regarded by the District or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Contractor may not be considered to be a basis for debarment.
  - (e) The prospective Bidder or Proposer does not carry workers' compensation or unemployment insurance as required by statute.
- (7) **Written Debarment Decision Required.** The District shall issue a Written decision to debar a prospective Bidder or Proposer under this Section. The decision must:
- (a) State the reasons for the action taken;
  - (b) Inform the debarred prospective Bidder or Proposer of the appeal rights of the prospective Bidder or Proposer under NCS-47-0760; and
  - (c) Be mailed or otherwise furnished immediately to the debarred prospective Bidder or Proposer.
- (8) A prospective Bidder or Proposer that wishes to appeal debarment shall, within three business Days after receipt of notice of debarment, notify the District that the prospective Bidder or Proposer appeals the debarment as provided in NCS-47-0760.

**OFFER EVALUATION AND AWARD**

**NCS-47-0600 Offer Evaluation and Award**

- (1) **District Evaluation.** The District must evaluate Offers only as set forth in the Solicitation Document pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b) based on the requirements set forth in the ITB or RFP, and in accordance with applicable law. The District must not evaluate Offers using any other requirement or criterion.
- (a) Evaluation of Bids.
    - (A) Nonresident Bidders: In determining the lowest Responsive Bid, the District must apply the reciprocal preference set forth in ORS 279A.120(2)(b) and NCS-46-0310 for nonresident Bidders.
    - (B) Public Printing: The District must, for the purpose of evaluating Bids, apply the public printing preference set forth in ORS 282.210 (printing shall be performed within the state).

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(C) **Award When Bids are Identical:** If the District determines that one or more Bids are identical under NCS D-46-0300, the District must Award a Contract in accordance with the procedures set forth in NCS D-46-0300.

(b) **Evaluation of Proposals.**

(A) **Award When Proposals are Identical:** If the District determines that one or more Proposals are identical under NCS D-46-0300, the District must Award a Contract in accordance with the procedures set forth in NCS D-46-0300.

(B) **Public Printing:** The District must, for the purpose of evaluating Proposals, apply the public printing preference set forth in ORS 282.210 (printing shall be performed within the state).

(c) **Recycled Materials.** When procuring Goods, the District shall give preference for Recycled Materials as set forth in ORS 279A.125 if:

(A) The Recycled Product is available;

(B) The Recycled Product meets applicable standards;

(C) The Recycled Product can be substituted for a comparable non-recycled product; and

(D) The Recycled Product's costs do not exceed the costs of non-recycled products by more than 5%, or a higher percentage if the District makes a Written determination.

(2) **Clarification of Bids or Proposals.** After the Opening, the District may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Bids or Proposals. All Bids or Proposals, in the District's sole discretion, needing clarification must be afforded such an opportunity. The District must document clarification of any Offeror's Bid or Proposal in the Procurement File.

(3) **Negotiations.**

(a) **Bids.** The District shall not negotiate with any Bidder. After Award of the Contract, the District and Contractor may only modify the Contract in accordance with NCS D-47-0800.

(b) **Requests for Proposals.** The District may only conduct discussions or negotiate with Proposers in accordance with ORS 279B.060(6)(b) and NCS D-47-0261. After Award of the Contract, the District and Contractor may only modify the Contract in accordance with NCS D-47-0800.

(4) **Award.**

(a) **General.** If Awarded, the District must Award the Contract to the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the most advantageous Responsive Proposal. The District may Award by item, groups of items, or the entire Offer, provided such Award is consistent with the Solicitation Document and in the public interest.

(b) **Multiple Items.** An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with the Award based on individual line item, group total of certain items, a "market basket" of items representative of the District's expected purchases, or grand total of all items.

(c) **Multiple Awards - Bids.**

(A) Notwithstanding Section (4)(a) of this Rule, the District may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. A multiple Award may be made if the Award to two or more Bidders is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

deemed significant by the District. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the District from Awarding a single Contract for such Invitation to Bid.

- (B) If an Invitation to Bid permits the Award of multiple Contracts, the District must specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.
- (d) Multiple Awards - Proposals.
  - (A) Notwithstanding Section (4)(a) of this Rule, the District may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. A multiple Award may be made if the Award to two or more Proposers is beneficial for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors deemed significant by the District. Multiple Awards may not be allowed for user preference unrelated to utility or economy. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals must not preclude the District from Awarding a single Contract for such Request for Proposals.
  - (B) If a Request for Proposals permits the Award of multiple Contracts, the District must specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services, which may include consideration and evaluation of the Contract terms and conditions agreed to by the Contractors.
- (e) Partial Awards. If after evaluation of Offers the District determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:
  - (A) The District may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or
  - (B) The District may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions, and Specifications.
- (f) All-or-None Offers. The District may Award all-or-none Offers if the evaluation shows an all-or-none Award to be the lowest cost for Bids or the most advantageous for Proposals of those submitted.

**NCS D-47-0610 Notice of Intent to Award**

(1) **Notice of Intent to Award.** The District must provide Written notice to all Offerors of its Intent to Award pursuant to ORS 279B.135 at least seven Days before the Award of a Contract, unless the District determines that circumstances justify prompt execution of the Contract, in which case the District may provide a shorter notice period. The District must document the specific reasons for the shorter notice period in the Procurement File. This Section does not apply to a Contract Awarded as a Small Procurement, an Intermediate Procurement, a sole-source Procurement, an Emergency Procurement, or a Special Procurement.

- (2) **Finality.** The District's Award will not be final until the later of the following:
  - (a) The expiration of the protest period provided pursuant to NCS D-47-0740; or
  - (b) The District provides Written responses to all timely filed protests denying the protests and affirming the Award.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**NCSD-47-0620 Documentation of Award**

- (1) **Basis of Award.** After Award, the District must make a record showing the basis for determining the successful Offeror as part of the District's Procurement File.
- (2) **Contents of Award Record.** The District's record must include:
  - (a) For Bids.
    - (A) Bids;
    - (B) Completed Bid tabulation sheet; and
    - (C) Written justification for any rejection of lower Bids.
  - (b) For Proposals.
    - (A) Proposals;
    - (B) The completed evaluation of the Proposals;
    - (C) Written justification for any rejection of higher-scoring Proposals; and
    - (D) If the District engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and NCSD-47-0261, Written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the District used to select a Proposer to which the District Awarded a Contract.

**NCSD-47-0630 Availability of Award Decisions**

- (1) **Contract Documents.** To the extent required by the Solicitation Document, the District must deliver to the successful Offeror a Contract, a Signed Purchase Order, Price Agreement, or other Contract Documents as applicable.
- (2) **Availability of Award Decisions.** A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge in person or by submitting to the District a Written request accompanied by payment. The requesting Person must provide the Solicitation Document number and enclose a self-addressed, stamped envelope.
- (3) **Availability of Procurement Files.** After notice of Intent to Award, the District must make Procurement Files available in accordance with applicable law.

**NCSD-47-0640 Rejection of an Offer**

- (1) **Rejection.**
  - (a) Any solicitation or Procurement described in a solicitation may be canceled, or any or all Bids or Proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the District as determined by the District. The reasons for the cancellation or rejection must be made part of the Procurement File. The District is not liable to any Bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, Bid, Proposal, or Award. ORS 279B.100.
  - (b) The District must reject an Offer upon the District's Finding that the Offer:
    - (A) Is contingent on the District's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (B)** Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;
  - (C)** Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;
  - (D)** Offers Goods and Services that fail to meet the Specifications of the Solicitation Document;
  - (E)** Is late;
  - (F)** Is not in substantial compliance with the Solicitation Document; or
  - (G)** Is not in substantial compliance with all prescribed public Procurement procedures.
- (c)** The District must reject an Offer upon the District's Finding that the Offeror:
- (A)** Has not been prequalified and the District required mandatory prequalification;
  - (B)** Has been debarred or has been disqualified pursuant to NCSD-46-0210(4) (DBE Disqualification);
  - (C)** Has not met the requirements of ORS 279A.105 (emerging small business), if required by the Solicitation Document;
  - (D)** Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
  - (E)** Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or
  - (F)** Is Non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the District must have information that indicates that the Offeror meets the applicable standards of responsibility. To be a Responsible Offeror, the District must determine pursuant to ORS 279B.110 that the Offeror:
    - (i)** Has available the appropriate financial, material, equipment, facility and personnel resources, and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
    - (ii)** Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement, and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize an Offeror's record of contract performance if the Offeror is or has recently been materially deficient in contract performance. In reviewing the Offeror's performance, the District should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The District may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. Pursuant to ORS 279B.110(2)(b), the District must make its basis for determining an Offeror non-Responsible under this Section part of the Procurement File;
    - (iii)** Has a satisfactory record of integrity. An Offeror may lack integrity if the District determines that the Offeror demonstrates a lack of business ethics, such as violation of

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

state environmental laws or false certifications made to the District. The District may find an Offeror non-Responsible based on the lack of integrity of any person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the contract or a parent company, predecessor, or successor person). The standards for debarment under ORS 279B.130 may be used to determine an Offeror's integrity. The District may find an Offeror non-Responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract, or in connection with the Offeror's performance of a contract or subcontract. Pursuant to ORS 279B.110(2)(c), the District must make its basis for determining that an Offeror is non-Responsible under this Section part of the Procurement File;

- (iv) Is legally qualified to contract with the District; and
- (v) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the District concerning responsibility, the District must base the determination of responsibility on any available information, or may find the Offeror non-Responsible.

(2) **Form of Business Entity.** For purposes of this Rule, the District may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the debarment provisions of this Rule.

**NCSD-47-0650 Rejection of All Offers**

(1) **Rejection.** The District may reject all Offers when the rejection is in the best interest of the District as determined by the District. The reasons for the rejection must be made part of the Procurement File. The District is not liable to any Bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, Bid, Proposal, or Award. ORS 279B.100. The District must notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) **Criteria.** The District may reject all Offers based on the following criteria:

- (a) The content of or an error in the Solicitation Document or the Procurement process unnecessarily restricted competition for the Contract;
- (b) The price, quality, or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
- (e) The District cancels the Procurement or solicitation in accordance with NCSD-47-0660; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

**NCSD-47-0660 Cancellation of Procurement or Solicitation**

(1) **Cancellation in the District Interest.** The District may cancel a Procurement or solicitation when the cancellation is in the best interest of the District as determined by the District. The reasons for the

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

cancellation must be made part of the Procurement File. The District is not liable to any Bidder or Proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, Bid, Proposal, or Award.

**(2) Notice of Cancellation Before Opening.** If the District cancels a Procurement or solicitation prior to Opening, the District must provide Written notice of cancellation in the same manner that the District initially provided notice of the solicitation. Such notice of cancellation must:

- (a) Identify the Solicitation Document;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

**(3) Notice of Cancellation After Opening.** If the District cancels a Procurement or solicitation after Opening, the District must provide Written notice of cancellation to all Offerors who submitted Offers.

**NCSD-47-0670 Disposition of Offers if Solicitation Cancelled**

**(1) Prior to Opening.** If the District cancels a Procurement or solicitation prior to Opening, the District must return all Offers it received to Offerors unopened, provided the Offerors submitted their Offers in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the District must open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the District must delete the Offers from OregonBuys or other approved Electronic Procurement System.

**(2) After Opening.** If the District cancels a Procurement or solicitation after Opening, the District:

- (a) May return Proposals in accordance with ORS 279B.060(6)(c); and
- (b) Must keep a list of all Offers received in the Procurement File.

**(3) Rejection of All Offers.** If the District rejects all Offers, the District must keep all Proposals and Bids in the Procurement File.

**LEGAL REMEDIES**

**NCSD-47-0700 Protests and Judicial Review of Special Procurements**

**(1) Purpose.** An affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an affected Person must file a Written protest with the Superintendent and exhaust all administrative remedies.

**(2) Delivery.** Notwithstanding the requirements for filing a writ of review under ORS Chapter 34 pursuant to ORS 279B.400(4)(a), an affected Person must deliver a Written protest to the District 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.

**(3) Content of Protest.** 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.

**(4) Contract Review Board Response.** The Contract Review Board shall not consider an affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this Rule or such different time period as may be provided in the public notice

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

of the approval of a Special Procurement. The Contract Review Board 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, 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.

**(5) Judicial Review.** An affected Person may seek judicial review of the Superintendent's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

**NCSD-47-0710 Protests and Judicial Review of Sole-Source Procurements**

**(1) Purpose.** For sole-source Procurements requiring public notice under NCSD-47-0275, an affected Person may protest the determination of the Superintendent or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an affected Person must file a Written protest with the Superintendent or designee and exhaust all administrative remedies.

**(2) Delivery.** Unless otherwise specified in the public notice of the sole-source Procurement, an affected Person must deliver a Written protest to the Superintendent or designee within seven Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

**(3) Content of Protest.** 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.

**(4) Response.** The Superintendent or designee shall not consider an affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this Rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Superintendent or designee shall issue a Written disposition of the protest in a timely manner. If the Superintendent or designee upholds the protest, in whole or in part, the Superintendent shall not enter into a sole-source Contract.

**(5) Judicial Review.** Judicial review of the Superintendent's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

**NCSD-47-0720 Protests and Judicial Review of Multi-Tiered and Multi-Step Solicitations**

**(1) Purpose.** An affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an affected Offeror must file a Written protest with the District and exhaust all administrative remedies.

**(2) Basis for Protest.** An affected Offeror may only protest its exclusion from a tier or step of competition if the Offeror is Responsible and submitted a Responsive Offer and, but for the District's mistake in evaluating the Offerors or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier, step, or phase 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

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

**(3) Delivery.** Unless otherwise specified in the Solicitation Document, an affected Offeror must deliver a Written protest to the District within five Days after issuance of the notice of the Competitive Range or notice of subsequent tiers, steps, or phases.

**(4) Content of Protest.** The affected Offeror's protest must be in Writing and must specify the grounds on which the protest is based.

**(5) District Response.** The District must not consider an affected Offeror's Multi-tiered or Multi-step 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. The District must issue a Written disposition of the protest in a timely manner. If the District upholds the protest, in whole or in part, the District may in its sole discretion either issue an Addendum under NCSD-47-0430 reflecting its disposition or cancel the Procurement or solicitation under NCSD-47-0660.

**(6) Judicial Review.** Judicial review of the District's decision relating to a Multi-tiered or Multi-step solicitation protest must be in accordance with ORS 279B.420.

**NCSD-47-0730 Protests and Judicial Review of Solicitations**

**(1) Protests.** 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). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the District and exhaust all administrative remedies.

**(2) Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the District not less than seven Days prior to Closing.

**(3) Content of Protest.** The prospective Offeror's Written protest must include:

- (a)** Sufficient information to identify the solicitation that is the subject of the protest;
- (b)** The grounds that demonstrate how the Procurement process is contrary to law or how the Solicitation Document is unnecessarily restrictive, is legally flawed, or improperly specifies a Brand Name;
- (c)** Evidence or supporting documentation that supports the grounds on which the protest is based; and
- (d)** A statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

**(4) District Response.** The District will not consider a Prospective Offeror's 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. The District must consider the protest if it is timely filed and meets the conditions set forth in Section (3) of this Rule. The District will issue a Written disposition of the protest no fewer than three business Days before Offers are due. If the District upholds the protest, in whole or in part, the District may in its sole discretion either issue an Addendum reflecting its disposition under NCSD-47-0430 or cancel the Procurement or solicitation under NCSD-47-0660.

**(5) Extension of Closing.** If the District receives a protest from a prospective Offeror in accordance with this Rule, the District may extend Closing if the District determines an extension is necessary to consider and respond to the protest.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

(6) **Clarification.** Prior to the deadline for submitting a protest, a prospective Offeror may request that the District clarify any provision of the Solicitation Document. The District's clarification 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.

(7) **Judicial Review.** Judicial review of the District's decision relating to a solicitation protest must be in accordance with ORS 279B.405.

(8) **Failure to Protest or Request a Clarification Precludes Protest of Award on Such Issue.** An Offeror cannot protest an Award based on any issue that could have, but was not, raised as a Request for Clarification or Protest of solicitation pursuant to this Section.

**NCSD-47-0740 Protests and Judicial Review of Contract Award**

(1) **Purpose.** An Offeror may protest the Award of a Contract, or the Intent to Award a Contract, whichever occurs first, if:

- (a) The Bidder or Proposer is adversely affected because the Bidder or Proposer would be eligible to be Awarded the Public Contract in the event that the protest were successful; and
- (b) The reason for the protest is that:
  - (A) All lower Bids or higher-ranked Proposals are non-Responsive;
  - (B) The District has failed to conduct the evaluation of Proposals in accordance with the criteria or processes described in the solicitation materials;
  - (C) The District has abused its discretion in rejecting the protestor's Bid or Proposal as non-Responsive; or
  - (D) The District's evaluation of Bids or Proposals or the District's subsequent determination of Award is otherwise in violation of these Rules or the Public Contracting Code.

(2) **Delivery.** An Offeror must file a Written protest with the District and exhaust all administrative remedies before seeking judicial review of the District's Contract Award decision. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the District within seven Days after the Award of a Contract, or issuance of the notice of intent to Award the Contract, whichever occurs first.

(3) **Content of Protest.** An Offeror's Written protest shall specify the grounds for the protest to be considered by the District pursuant to Section (1) of this Rule.

(4) **District Response.** The District shall not consider an Offeror's Contract Award 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. The District shall issue a Written disposition of the protest in a timely manner. If the District upholds the protest, in whole or in part, the District may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) **Judicial Review.** Judicial review of the District's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

**NCSD-47-0750 Judicial Review of Other Violations**

Any violation of ORS 279A or 279B by the District, for which no judicial remedy is otherwise provided in the Public Contracting Code, is subject to judicial review as set forth in ORS 279B.420.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

**NCSD-47-0760 Review of Prequalification and Debarment Decisions**

- (1) Upon receipt of a notice from the District of a prequalification decision under ORS 279B.125 or of a decision to debar under ORS 279B.130, a prospective Bidder or Proposer that wishes to appeal the decision shall, within three Days after receipt of the notice, notify the District that the prospective Bidder or Proposer appeals the decision as provided in this Section.
- (2) Immediately upon receipt of the prospective Bidder's or Proposer's notice of appeal, the District shall notify the appropriate Local Contract Review Board.
- (3) Upon the receipt of notice from the District under Section (2) of this Rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 Days after receiving the notice from the District. The Contract Review Board shall set forth in Writing the reasons for the hearing decision.
- (4) At the hearing, the Contract Review Board shall consider de novo the notice of denial, revocation, or revision of a prequalification or the notice of debarment, the standards of responsibility listed in ORS 279B.110(2) on which the District based the denial, revocation or revision of the prequalification or the reasons listed in ORS 279B.130(2) on which the District based the debarment, and any evidence provided by the parties. Hearings before the Contract Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.
- (5) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:
  - (a) If the decision to deny, revoke, or revise a prequalification of a Person as a Bidder or the decision to debar a Person is upheld, the costs shall be paid by the Person appealing the decision.
  - (b) If the decision to deny, revoke, or revise a prequalification of a Person as a Bidder or the decision to debar a Person is reversed, the costs shall be paid by the District.
- (6) Judicial review of the District's prequalification and debarment decisions must be as set forth in ORS 279B.425.

**NCSD-47-0800 Amendments to Goods or Services Contracts and Price Agreements**

- (1) **Generally.** The District may Amend a Contract for Goods or Services without additional competition in any of the following circumstances:
  - (a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole-source notice or the approved Special Procurement, or the Contract, if any. An amendment is not within the scope of the Procurement if the District determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected Award of the Contract.
  - (b) These Rules otherwise permit the District to Award a Contract without competition for the Goods or Services to be procured under the amendment.
  - (c) The amendment is necessary to comply with a change in law that affects performance of the Contract.

**North Clackamas School District Public Contracting Rules**  
Division 47 – Public Contracting Rules for Contracts for Goods and/or Services  
Other Than Personal Services

- (d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is advantageous to the District, subject to all of the following conditions:
  - (A) The Goods or Services to be provided under the Amended Contract are the same as the Goods or Services to be provided under the unamended Contract.
  - (B) The District determines that, with all things considered, the Amended Contract is at least as favorable to the District as the unamended Contract.
  - (C) The amended Contract does not have a total term greater than allowed in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole-source notice or the approved Special Procurement, if any, after combining the initial and extended terms. For example, a one-year Contract described as renewable each year for up to four additional years, may be renegotiated as a two- to five-year Contract, but not beyond a total of five years.

(2) **Small or Intermediate Contract.** The District may amend a Contract Awarded as a Small or Intermediate Procurement pursuant to Section (1) of this Rule, provided that the total increase in Contract Price does not exceed the amount set forth in NCS-47-0265 for Small Procurements or NCS-47-0270 for Intermediate Procurements.

(3) **Price Agreements.** The District may amend a Price Agreement as follows:

- (a) As permitted by the Price Agreement;
- (b) If the circumstances set forth in ORS 279B.140(2) exist, as follows:
  - (A) The District fails to receive funding or appropriations to sustain purchases at the levels contemplated at the time of contracting; or
  - (B) The applicable program is terminated or the law changes so that purchases under the Price Agreement are no longer authorized or appropriate for the District's use; or
- (c) As permitted by applicable law.

**END OF DIVISION 47**

**DIVISION 48**

**CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING,  
PHOTOGRAMMETRIC MAPPING, TRANSPORTATION PLANNING OR LAND  
SURVEYING SERVICES AND RELATED SERVICES CONTRACTS**

**NCSD-48-0100 Application**

These Division 48 Rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and providers of Related Services under Contracts as set forth in the following procedures:

- (1) Procedures through which the District selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, Land Surveying Services, or Related Services; and
- (2) Two-tiered procedures for selection of Photogrammetrists, Transportation Planners, Land Surveyors, and providers of Related Services for certain public improvements owned and maintained by the District.

**NCSD-48-0110 Definitions**

In addition to the definitions set forth in NCSD-46-0110, the following definitions apply to these Division 48 Rules:

- (1) **"Architect"** is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 through 671.220, and includes, without limitation, the terms "Architect," "licensed Architect," and "registered Architect."
- (2) **"Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services"** is defined in ORS 279C.100 and means professional Services that are required to be performed by an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor.
- (3) **"Consultant"** means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor, or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, or providers of Related Services, or any combination of the foregoing. Provided, however, when the District is entering into a direct Contract under NCSD-48-0200(1)(c) or (d), the "Consultant" must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor, as required by ORS 279C.115(1).
- (4) **"Engineer"** means an individual who is registered and holds a valid certificate in the practice of land engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).
- (5) **"Estimated Fee"** means The District's reasonably projected fee to be paid for a Consultant's Services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.
- (6) **"Land Surveyor"** means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

- (7) **"Photogrammetric Mapping"** means an evaluating and measuring of land that is limited to the determination of the topography, area, contours, and location of planimetric features, by using photogrammetric methods or similar remote sensing technology, including but not limited to using existing ground control points incidental to the photogrammetric or remote sensing mapping process.
- (8) **"Photogrammetrist"** means an individual who is registered and holds a valid certificate to practice photogrammetric mapping in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).
- (9) **"Price Agreement"** for purposes of this Division 48 is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include Consultant compensation information, with:
- (a) No guarantee of a minimum or maximum purchase; or
  - (b) An initial work order, task order, or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the District does not guarantee a minimum or maximum additional purchase.
- (10) **"Project"** means all components of the District's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, under a Contract.
- (11) **"Related Services"** means Personal Services, other than Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services that are related to planning, designing, engineering, or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost-estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services, or land-use planning services.
- (12) **"Transportation Planning Services"** means Transportation Planning Services for Projects that require compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements, and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans, and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.

#### **NCSD-48-0120 List of Interested Consultants; Performance Record**

- (1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services may annually submit a statement describing their qualifications and

## **North Clackamas School District Public Contracting Rules**

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

related performance information to the District's Business Operations office address. The District shall use this information to create a list of prospective Consultants and shall update this list at least once every two years.

(2) The District may compile and maintain a record of each Consultant's performance under Contracts with the particular Contracting Agency, including information obtained from Consultants during an exit interview. Upon request and in accordance with the Oregon Public Records Law (ORS 192.311 through 192.478), the District may make available copies of the records.

#### **NCSD-48-0130 Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest**

(1) **Selection of Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.** When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the District shall follow the applicable selection procedure under either NCSD-48-0200 (Direct Appointment Procedure), NCSD-48-0210 (Informal Selection Procedure), or NCSD-488-0220 (Formal Selection Procedure). The District may solicit or use pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates, and overhead in any of the District's selection procedures to select a Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services pursuant to the requirements of ORS 279C.110.

(2) **Selection of Consultants to Perform Related Services.** The District shall select a Consultant to perform Related Services using one of the following selection procedures:

- (a) When selecting a Consultant on the basis of qualifications alone, the District shall follow the applicable selection procedure under either NCSD-48-0200 (Direct Appointment Procedure), NCSD-48-0210 (Informal Selection Procedure), or NCSD-48-0220 (Formal Selection Procedure);
- (b) When selecting a Consultant on the basis of price competition alone, the District shall follow the applicable provisions under NCSD 48-0200 (Direct Appointment Procedure), the applicable provisions of NCSD-48-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information, or the applicable provisions of NCSD-48-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price proposals and other pricing information; and
- (c) When selecting a Consultant on the basis of price and qualifications, the District shall follow the applicable provisions under NCSD 48-0200 (Direct Appointment Procedure), the applicable provisions of NCSD 48-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals, or the applicable provisions of NCSD-48-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications proposals. For selections under the Informal Selection procedure of NCSD-48-0210, the District may use abbreviated Requests for Proposals that nevertheless meet the requirements of NCSD-48-0210, when the District determines, in its sole discretion, that the characteristics of the Project and the Related Services required by the District would be adequately addressed by a more abbreviated Request for Proposals document generally comparable to the Intermediate Procurement procedures and related documentation under ORS 279B.070 and NCSD-47-0270. The District may request and consider a Proposer's pricing policies and pricing proposals or other

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead, submitted with a proposal.

- (3) Sections (1) and (2) Do Not Apply to Price Agreements.** The District is not required to follow the procedures in Section (1) or Section (2) of this Rule when the District has established Price Agreements pursuant to NCSO-48-0270 with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the District uses to select a single Consultant, when the District has established Price Agreements with more than one Consultant, shall meet the requirement of NCSO 48-0270 Price Agreements.
- (4) Electronic Selection.** The District may use electronic methods to screen and select a Consultant in accordance with the procedures described in Sections (1) and (2) of this Rule. If The District uses electronic methods to screen and select a Consultant, the District shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with NCSO-47-0330 (Electronic Procurement).
- (5) Contracts for "Mixed" Services.** For purposes of these Division 48 Rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. The District's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. The District will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the District shall comply with the requirements of Section (1) of this Rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related Services, the District shall comply with the requirements of Section (2) of this Rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the District shall comply with the applicable provisions of NCSO Divisions 46, 47 and 49 of these Rules that match the predominant purpose of the Contract.
- (6) Compliance with Board Policy.** In applying these Rules, the District shall support Board Policies relating to District Contracts.
- (7) Disclosure Requirements for Proposals under Division 48.** The following provisions apply to proposals received by the District for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:
- (a) "Competitive Proposals" Means all Proposals Solicited under Division 48.** The term "Competitive Proposal" includes Proposals under NCSO-48-0200 (Direct Appointment Procedure), NCSO-48-0210 (Informal Selection Procedure), NCSO-48-0220 (Formal Selection Procedure) or NCSO-48-0130(2)(c) (Selection Based on Price and Qualifications), and any proposals submitted in response to a selection process for a work order or task order under NCSO-48-0270 (Price Agreements) or NCSO-48-0280 (FSCP).
  - (b) Direct Appointments.** For purposes of Proposals received by the District under NCSO-48-0200 (Direct Appointment Procedure), a formal notice of Intent to Award is not required. As a result, while the District may make Proposals under NCSO-48-0200 (Direct Appointment Procedure) open for public inspection following the District's decision to begin Contract negotiations with

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

the selected Consultant, Proposals are not required to be open for public inspection until after the District has executed a Contract with the selected Consultant.

- (c) Closely Competitive Proposals. In the limited circumstances permitted by ORS 279C.110, 279C.115, and 279C.120, where the District is conducting discussions or negotiations with Proposers who submit Proposals that the District has determined to be closely competitive or to have a reasonable chance of being selected for Award, the District may open Proposals so as to avoid disclosure of Proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, the District may open Proposals in such a way as to avoid disclosure of the contents until after the District executes a Contract with the selected Consultant. If the District determines that it is in the best interest of the District to do so, the District may make Proposals available for public inspection following the District's issuance of a notice of Intent to Award a Contract to a Consultant.
- (d) ORS 297C.107 Requirements. Disclosure of Proposals and Proposal information is otherwise governed by ORS 279C.107 as follows:
  - (A) The District may open Proposals so as to avoid disclosing contents to competing Proposers during, where applicable, the process of negotiation.
  - (B) The District need not open Proposals for public inspection until after the District executes a Contract.
  - (C) Regardless of when Proposals are opened for public inspection, the District shall withhold from disclosure trade secrets as defined in ORS 192.501, and information submitted to the District in confidence as described in ORS 192.502.
  - (D) Opening a Proposal at a public meeting of the Board or other body subject to the Public Meetings Law does not make the contents of the Proposal subject to disclosure regardless of whether an executive session has been called.
  - (E) If a request for Proposals is cancelled after Proposals are received, the District shall, subject to ORS 192.501 and 192.502, return a Proposal and all copies of the Proposal to the Proposer. The District shall keep a list of returned Proposals in the Procurement File.
- (8) Independent and Objective Oversight Required.** Pursuant to ORS 279C.307, when procuring Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Contract subject to NCS D Divisions 48 or 49 ("ORS 279C.307 Services"), the District may not:
  - (a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of the ORS 279C.307 Services contract; or
  - (b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation, or oversight by means of the ORS 279C.307 Services Contract.
- (9) Application of Section (8).** The requirements of ORS 279C.307 and Section 8 of this Rule apply in the following circumstances, except as provided in section (10) of this Rule:

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

- (a) The District requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services, or a Public Contract for construction services under ORS chapter 279C.
  - (b) The Procurement of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:
    - (A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services that involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;
    - (B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;
    - (C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with, or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services, or other Related Services for a Project;
    - (D) Procurements for special inspections and testing services, which involve inspecting, testing, or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and
    - (E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing the Public Contracts described in Section (10)(a) of this Rule.
- (10) Design-Build and CM/GC Contract Solicitations.** The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:
- (a) To the District's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in NCSD-49-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to the District's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and
  - (b) To the District's Procurement of both pre-construction services and construction services through a single Procurement of Construction Manager/General Contractor Services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ORS 279C.307 do apply to the District's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with, or otherwise overseeing a Construction

## North Clackamas School District Public Contracting Rules

Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

Manager/General Contractor Services Contract or performance under such a Contract resulting from a Procurement of Construction Manager/General Contractor Services.

### **SELECTION PROCEDURES**

#### **NCSD-48-0200 Direct Appointment Procedure**

(1) The District may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these Rules if:

- (a) Emergency. The District finds that an Emergency exists; or
- (b) Small Estimated Fee. The Estimated Fee to be paid under the Contract does not exceed \$100,000; or
- (c) FSCP. The Consultant is a member of an FSCP that has been established for the class of Work for which a Contract is required; or
- (d) Continuation of Project with an Intermediate Estimated Fee. Where a District Project is being continued, as more particularly described below, and where the Estimated Fee will not exceed \$250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the following requirements:
  - (A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned, or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;
  - (B) The Estimated Fee to be made under the Contract does not exceed \$250,000; and
  - (C) The District used either the formal selection procedure under NCSD-48-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract; or
- (e) Continuation of Project With an Estimated Fee Greater than \$250,000. When a District Project is being continued, as more particularly described below, and where the Estimated Fee is expected to exceed \$250,000, the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be performed under the Contract shall meet the following requirements:
  - (A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned, or otherwise previously studied under an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract; or
  - (B) The District used either the formal selection procedure under NCSD-48-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the

## **North Clackamas School District Public Contracting Rules**

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

Consultant at the time of original selection to select the Consultant for the earlier Contract;  
and

- (C) The District makes Written Findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:
  - (i) Promote efficient use of public funds and resources and result in substantial cost savings to the District; and
  - (ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the Award of the Contract.
- (2) The District may select a Consultant for a Contract under this Rule from the following sources:
  - (a) District's list of Consultants that is created under NCSD-48-0120;
  - (b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under NCSD-48-0120 or similar local rule, with Written consent of that Contracting Agency; or
  - (c) All Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the District reasonably can identify under the circumstances.
- (3) The District shall direct negotiations with Consultant selected under this Rule toward discussing, refining, and finalizing the following:
  - (a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services to be provided by the Consultant
  - (b) The Consultants' performance obligations and performance schedule;
  - (c) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
  - (d) Any other provisions that the District believes to be in the District's best interest to negotiate.

#### **NCSD-48-0210 Informal Selection Procedure**

- (1) The District may use the informal selection procedure described in this Rule to obtain a Public Contract if the Estimated Fee is expected not to exceed \$250,000.
- (2) When using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and qualifications, the District shall:
  - (a) Create a Request for Proposals (“RFP”) that includes at a minimum the following:
    - (A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric

### **North Clackamas School District Public Contracting Rules**

#### **Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract**

Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

- (B)** The anticipated Contract performance schedule;
- (C)** Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional Services related to the Project, including construction services;
- (D)** The date and time proposals are due and other directions for submitting proposals;
- (E)** Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:
  - (i)** The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;
  - (ii)** Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;
  - (iii)** A Consultant's capability, experience, and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including, but not limited to, quality of work, ability to meet schedules, cost control methods, and contract administration practices;
  - (iv)** A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;
  - (v)** A Consultant's geographic proximity to and familiarity with the physical location of the Project;
  - (vi)** Volume of work, if any, previously Awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional Services required;
  - (vii)** A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
  - (viii)** Whether the Consultant owes a liquidated and delinquent debt to the State of Oregon;
  - (ix)** If the District is selecting a Consultant to provide Related Services, pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates, and overhead.
- (F)** A Statement that Proposers responding to the RFP do so solely at their expense, and the District is not responsible for any Proposer expenses associated with the RFP; and

### **North Clackamas School District Public Contracting Rules**

#### **Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract**

- (G) A statement directing Proposers to the protest procedures set forth in these Division 48 Rules.
- (b) Provide a Request for Proposals to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, District shall provide the RFP to all available prospective Consultants and shall maintain a written record of the District's efforts to locate available prospective Consultants for the RFP. District shall draw prospective Consultants from:

  - (A) The District's list of Consultants that is created and maintained under NCSD-48-0120;
  - (B) Another Contracting Agency's list of Consultants that is created and maintained under NCSD-48-0120 or equivalent local rule; or
  - (C) All Consultants that the District reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing.
- (c) Review and rank all proposals received according to the criteria set forth in the Request for Proposals, and select the three highest-ranked Proposers.
- (3) If the District uses the informal selection procedure for Related Services on the basis of price proposals and other pricing information alone it shall:

  - (a) Create an informal Request for Proposals that includes at a minimum the following:

    - (A) A description of the Project for which a Consultant's Related Services are needed and a description of the Related Services that will be required under the resulting Contract;
    - (B) The anticipated Contract performance schedule;
    - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
    - (D) The date and time proposals are due and other directions for submitting proposals;
    - (E) Any minimum or pass-fail qualifications that the Proposers shall meet, including but not limited to any such qualifications in the subject matter areas described in section (2)(a)(E)(i) through section (2)(a)(E)(viii) of this rule that are related to the Related Services described in the informal Request for Proposals;
    - (F) Pricing criteria upon which the highest ranked Consultant will be selected. Pricing criteria may include, but are not limited to, the total price for the Related Services described in the informal Request for Proposals, Consultant pricing policies and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the informal Request for Proposals, expenses, hourly rates and overhead; and
    - (G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules.
  - (b) Provide the Request for Proposals to a minimum of five (5) prospective Consultants drawn from:

    - (A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);



## **North Clackamas School District Public Contracting Rules**

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

- (f) Complete the evaluation of the highest ranked prospective Consultants that have decided to provide price proposals. In the District's final evaluation of the prospective Consultants who have provided price proposals, the District cannot assign more than fifteen (15) percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal;
- (5) If the District does not cancel the RFP after it reviews the proposals and ranks each Proposer, the District will begin negotiating a Contract with the highest ranked Proposer. The District shall direct Contract negotiations toward discussing, refining and finalizing the following:
- (a) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;
  - (b) The Consultant's performance obligations and performance schedule;
  - (c) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
  - (d) Any other conditions or provisions that the District believes to be in the District's best interest to negotiate.
- (6) The District shall, either orally or in Writing, formally terminate negotiations with the highest-ranked Proposer if the District and the Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second-ranked Proposer, and if necessary, with the third-ranked Proposer, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the District may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this Rule, or proceed with a formal solicitation under NCSD-48-0220.
- (7) The District shall terminate the informal selection procedure and proceed with the formal selection procedure under NCSD-48-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

#### **NCSD-48-0220 Formal Selection Procedure**

- (1) Subject to NCSD-48-0130, the District shall use the formal selection procedure described in this Rule to select a Consultant if the Consultant cannot be selected under either NCSD-48-0200 or NCSD-48-0210. The formal selection procedure described in this Rule may otherwise be used at the District's discretion.
- (2) When using the formal selection procedure, the District shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.
  - (a) Except as provided in Section (2)(b) of this Rule, the District shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located, and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority-owned, women-owned, veteran-owned, and emerging small business enterprise audiences.

### North Clackamas School District Public Contracting Rules

#### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

- (A) The District shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than 14 calendar days before the Closing date set forth in the RFQ or RFP.
  - (B) The District shall include a brief description of the following items in the advertisement:
    - (i) The Project;
    - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the District seeks;
    - (iii) How and where Consultants may obtain a copy of the RFQ or RFP; and
    - (iv) The deadline for submitting a Proposal or response to the RFQ or RFP.
  - (b) In the alternative to advertising in a newspaper as described in Section (2)(a) of this Rule, the District shall publish each RFP and RFQ by one or more of the electronic methods identified in NCSO-46-0110(14). The District shall comply with Sections (2)(a)(A) and (2)(a)(B) of this Rule when publishing advertisements by electronic methods.
  - (c) The District may send notice of the RFP or RFQ directly to all Consultants on the District's list of Consultants that is created and maintained under NCSO-48-0120.
- (3) Request for Qualifications Procedure.** The District may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the District may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.
- (a) Mandatory RFQ Requirements. The District shall include the following, at a minimum, in each RFQ:
    - (A) A brief description of the Project for which the District is seeking a Consultant;
    - (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the District seeks for the Project;
    - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional Services related to the Project, including, but not limited to, construction services;
    - (D) The deadline for submitting a response to the RFQ;
    - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the District seeks;
    - (F) The RFQ evaluation criteria, including weights, points, or other classifications applicable to each criterion;
    - (G) A statement whether or not the District will hold a prequalification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, and if a prequalification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

### **North Clackamas School District Public Contracting Rules**

#### **Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract**

- (H) A statement that Consultants responding to the RFQ do so solely at their expense, and that the District is not responsible for any Consultant expenses associated with the RFQ.
- (b) Optional RFQ Requirements. The District may include a request for any or all of the following in each RFQ:

  - (A) A statement describing Consultants' general qualifications and related performance information;
  - (B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including Consultants' available resources and recent, current, and projected workloads;
  - (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
  - (D) A copy of all records, if any, of Consultants' performance under contracts with any other Contracting Agency;
  - (E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those Services;
  - (F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;
  - (G) Consultants' geographic proximity to and familiarity with the physical location of the Project;
  - (H) Consultants' ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
  - (I) If the District is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing Proposals, or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates, and overhead;
  - (J) Consultants' ability to assist the District in complying with any art acquisition requirements imposed by the District;
  - (K) Consultants' ability to assist the District in complying with State of Oregon energy efficient design requirements established by the District;
  - (L) Consultants' ability to assist the District in complying with the energy technology requirements of ORS 279C.527 and 279.528;
  - (M) Whether the Consultant owes a liquidated and delinquent debt to the State of Oregon; and
  - (N) Any other information the District deems reasonably necessary to evaluate Consultants' qualifications.

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

- (c) If the District will use a Request for Qualifications followed by a Request for Proposals to procure Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying services under this rule and the District intends to use pricing policies, proposals or other pricing information as part of the District's screening and selection of prospective Consultants, pursuant to ORS 279C.110(5), the District cannot request cost proposals or otherwise use pricing policies, proposals or other pricing information as part of the Request for Qualifications. The District may only request cost proposals or otherwise use pricing policies, proposals or other pricing information during the RFP process, following the establishment of a short list of qualified Consultants through the Request for Qualifications process.
  - (d) **RFQ Evaluation Committee.** The District shall establish an RFQ evaluation committee of at least two individuals to review, score, and rank the responding Consultants according to the evaluation criteria. The District may appoint to the evaluation committee District employees or employees of other public agencies with experience in architecture, engineering, or land surveying, Related Services, construction services, or Public Contracting. If the District procedure permits, the District may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation or land surveying, or related professions. The District shall designate one member of the evaluation committee as the evaluation committee chairperson.
  - (e) The District may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including, but not limited to, the following:
    - (A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
    - (B) Placing a predetermined number of the highest-scoring Consultants on a short list;
    - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.
  - (f) After the evaluation committee reviews, scores, and ranks the responding Consultants, the District shall establish a short list of at least five qualified Consultants, if feasible, provided however, that if four or fewer Consultants responded to the RFQ or if fewer than five Consultants fail to meet the District's minimum requirements, then:
    - (A) The District may establish a short list of fewer than five qualified Consultants; or
    - (B) The District may cancel the RFQ and issue an RFP.
  - (g) No Consultant will be eligible for placement on the District's short list established under Section (3)(d) of this Rule if the Consultant or any of Consultant's principals, partners, or associates are members of the District's RFQ evaluation committee.
  - (h) Except when the RFQ is cancelled, the District shall provide a copy of the subsequent RFP to each Consultant on the short list.
- (4) **Formal Selection of Consultants Through Request for Proposals.** The District shall use the procedure described in this Section (4) of this Rule when issuing an RFP for a Contract described in Section (1) of this Rule.

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

- (a) Mandatory RFP Requirements. Except as otherwise provided in sections (4)(b) and (4)(c) of this rules, when the District uses the formal selection procedure, the District shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ:
- (A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.
  - (B) The RFP evaluation process and the criteria that will be used to select the most qualified Proposer, including the weights, points, or other classifications applicable to each criterion. If the District does not indicate the applicable number of points, weights, or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:
    - (i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
    - (ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on comparable projects;
    - (iii) The amount and type of resources and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
    - (iv) The recent, current, and projected workloads of the staff and resources referenced in Section (4)(a)(B)(iii), above;
    - (v) The proportion of time Proposers estimate that the staff referenced in Section (4)(a)(B)(iii) above would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
    - (vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under NCS-48-0120;
    - (vii) References and recommendations from past clients;
    - (viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls, and contract administration;
    - (ix) Status and quality of any required license or certification;

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

- (x) Proposers' knowledge and understanding of the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, and proposed solutions to any perceived design and constructability issues;
  - (xi) Results from interviews, if conducted;
  - (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
  - (xiii) If the District is selecting a Consultant to provide Related Services, pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead; and
  - (xiv) Any other criteria that the District deems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, that these additional criteria cannot include pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead, when the sole or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.
- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional Services related to the Project, including, but not limited to, construction services;
  - (D) Whether interviews are possible and if so, the weight, points, or other classifications applicable to the potential interview;
  - (E) The date and time proposals are due, and the delivery location for proposals;
  - (F) Reservation of the right to seek clarifications of each proposal;
  - (G) Reservation of the right to negotiate a final Contract that is in the best interest of the District;
  - (H) Reservation of the right to reject any or all proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the District;
  - (I) A statement that Proposers responding to the RFP do so solely at their expense, and the District is not responsible for any Proposer expenses associated with the RFP;
  - (J) A statement directing Proposers to the protest procedures set forth in these Division 48 Rules;
  - (K) Special Contract requirements, including, but not limited to, disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE"), Veteran-owned business enterprise ("VB") and emerging small business

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

enterprise ("ESB") participation goals or good-faith efforts with respect to DBE, MBE, WBE, VB, and ESB participation, and federal requirements when federal funds are involved;

- (L) A statement whether or not the District will hold a pre-proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, and if a pre-proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
  - (M) A request for any information the District deems reasonably necessary to permit the District to evaluate, rank, and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and
  - (N) A sample form of the Contract.
- (b) RFP Contents for Related Services Selections Based on Price Only. When using the formal selection procedure, the District shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ, when the formal selection procedure is for Related Services selected on the basis of price proposals and other pricing information only:
- (A) General background information, including a description of the Project and the specific Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Related Services sought will be performed;
  - (B) The RFP evaluation process and the price criteria which will be used to select the highest ranked Proposer, including the weights, points or other classifications applicable to each criterion. If the District does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related Services described in the Request for Proposals, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the Request for Proposals, expenses, hourly rates and overhead;
  - (C) Any minimum or pass-fail qualifications that the Proposers shall meet, including but not limited to any such qualifications in the subject matter areas described in section (4)(a)(B)(i) through section (4)(a)(B)(xii) of this rule; and
  - (D) The information listed in section (4)(a)(C) through section (4)(a)(N) of this rule pertaining to the Related Services described in the Request for Proposals.
- (c) RFP Contents for District Selection of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services with Pricing Policies, Proposals or Other Pricing Information. If the District will be including pricing policies, proposals or other pricing information in the District's formal selection procedure criteria for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services pursuant to ORS 279C.110(5), the District shall meet the following minimum requirements for each RFP:
- (A) If the District has used the Request for Qualifications procedure in section (3) of this rule to evaluate potential Consultants and establish a short list of qualified Consultants pursuant to ORS 279C.110(5), the RFP shall meet the requirements of ORS 279C.110(5) that address

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

the second phase of the selection process applicable to the short list of no more than three of the highest ranked prospective consultants that were identified in the initial phase of the selection process described in ORS 279C.110(5)(a) and (b).

- (B) If the District has elected to not use the Request for Qualifications procedure in section (3) of this rule, and will use only an RFP in the District's use of the formal selection procedure, the District shall include at least the following in the RFP:
- (i) The information set forth in ORS 279C.110(5)(a). In providing an estimate of the cost of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, the District may provide a specific estimate of that cost, or a range of estimated costs;
  - (ii) (In the initial phase of the RFP, provisions describing the District's evaluation of each prospective Consultant on the basis of each Consultant's qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, with those qualifications including the criteria set forth in subsections (4)(a)(B)(i) through (4)(a)(B)(xiii) and (4)(a)(B)(xv) of this rule;
  - (iii) At the end of the initial phase of the RFP, provisions describing the District's evaluation scores of each Consultant and rank of each Consultant according to the evaluation scores. The District shall identify up to three (3) of the highest ranked
  - (iv) prospective Consultants as being qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services described in the RFP, and as being eligible to participate in the second phase of the RFP process;
  - (v) In the second phase of the RFP, provisions describing the District's request of a pricing proposal from each of the highest ranked prospective Consultants identified in the initial phase of the RFP, pursuant to the requirements of ORS 279C.110(5)(c)(A) and (B);
  - (vi) Provisions describing the District's evaluation of the highest ranked prospective Consultants that have decided to provide price proposals. In the District's final evaluation of the prospective Consultants who have provided price proposals, the District cannot assign more than fifteen (15) percent of the overall weight of the evaluation criteria in the second phase of the RFP to each Consultant's price proposal
- (d) RFP Evaluation Committee. The District shall establish a committee of at least three individuals to review, score, and rank Proposals according to the evaluation criteria set forth in the RFP. The Director of Business Operations or the Director's designee shall serve as chair of the evaluation committee, but will not participate in the scoring or ranking of Proposals. If the RFP has followed an RFQ, the District may include the same members who served on the RFQ evaluation committee. The District may appoint to the evaluation committee the District employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, construction services, or Public Contracting. At least one member of the evaluation committee must be a District employee. If the District procedure permits, the District may include on the evaluation committee private practitioners of architecture, engineering, land

## **North Clackamas School District Public Contracting Rules**

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

surveying, or related professions. The District shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

- (A) No Proposer will be eligible for Award of the Contract under the RFP if Proposer or any of Proposer's principals, partners, or associates are members of the District's RFP evaluation committee for the Contract;
  - (B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points, or other classifications indicated in the RFP for the anticipated interview; and
  - (C) The evaluation committee shall provide to the District the results of the scoring and ranking for each Proposer.
- (e) If the District does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the District will begin negotiating a Contract with the highest-ranked Proposer. The District shall direct negotiations toward discussing, refining and finalizing the following:
- (A) The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;
  - (B) The Consultant's performance obligations and performance schedule;
  - (C) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the District as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
  - (D) Any other conditions or provisions the District believes to be in the District's best interest to negotiate.
- (f) The District shall, either orally or in Writing, formally terminate negotiations with the highest-ranked Proposer if the District and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second-ranked Proposer, and if necessary, with the third-ranked Proposer, and so on, in accordance with Section (4)(c) of this Rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the District may end the particular formal solicitation. Nothing in this Rule precludes the District from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

#### **NCSD-48-0230 Ties Among Proposers**

(1) If the District is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the District may select a candidate through any process that the District believes will result in the best value for the District, taking into account the scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping,

## **North Clackamas School District Public Contracting Rules**

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

Transportation Planning or Land Surveying Services. Provided, however, that the tie-breaking process established by the District under this Section (1) cannot be based on pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates, and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty, and good faith on the part of the District and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the District and the selected Proposer shall proceed with negotiations under NCS D-48-0210(3) or NCS D-48-0220(4)(c), as applicable.

(2) If the District is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the District shall follow the procedure set forth in NCS D-46-0300 to select the Consultant.

#### **NCS D-48-0240 Protest Procedures**

(1) **RFP Protest and Request for Change.** Consultants may submit a Written protest of anything contained in an RFP and may request a change to any provision, Specification, or Contract term contained in an RFP, no later than seven Days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, Specifications, or Contract terms. The District may not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection.**

(a) **Single Award.** In the event of an Award to a single Proposer, the District shall provide to all Proposers a copy of the selection notice that the District sent to the highest-ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest-ranked Proposer may submit a Written protest of the selection to the District no later than seven Days after the date of the selection notice, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest-ranked Proposer because the Proposals of all higher-ranked Proposers failed to meet the requirements of the RFP, or because the higher-ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) **Multiple Award.** In the event of an Award to more than one Proposer, the District shall provide to all Proposers copies of the selection notices that the District sent to the highest-ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest-ranked Proposers may submit a Written protest of the selection to the District no later than seven Days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest-ranked Proposers because the Proposals of all higher-ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher-ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher-ranked Proposers, or a sufficient number of higher-ranked Proposers to include the protesting Proposer in the group of highest-ranked Proposers, otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

## **North Clackamas School District Public Contracting Rules**

Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping,  
Transportation Planning or Land Surveying Services and Related Services Contract

- (c) Effect of Protest Submission Deadline. The District may not consider any protest that is submitted after the submission deadline.

**(3) Resolution of Protests.** A duly authorized representative of the District shall resolve all timely submitted protests within a reasonable time following the District's receipt of the protest, and once resolved, shall promptly issue a Written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the District shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these Rules.

### **NCSD-48-0250 Solicitation Cancellation, Delay, or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility For Costs**

The District may cancel, delay, or suspend a solicitation, RFQ, or other preliminary Procurement document, whether related to a Direct Appointment Procedure (NCSD-48-0200), Informal Selection Procedure (NCSD-48-0210), or a Formal Selection Procedure (NCSD-48-0200), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the District believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension, or rejection, the District is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension, or rejection. Consultants responding to solicitations, RFQs, or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs, or responses to other preliminary Procurement documents.

### **NCSD-48-0260 Two-Tiered Selection Procedure for District Public Improvement Projects**

**(1)** If the District requires an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement that is owned and maintained by the District and a State Agency will serve as the lead, the District will enter into Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that Public Improvement, and the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, or Land Surveyors.

**(2) Tier One.** State that the District shall, when feasible, identify no fewer than the three most qualified Proposers responding to an RFP that was issued under the applicable selection procedures described in NCSD-48-0210 and NCSD-48-0220, or from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors identified under NCSD-48-0200, and shall notify the District of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

**(3) Tier Two.** In accordance with the qualifications-based selection requirements of ORS 279C.110, the District shall either:

- (a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the District's public improvement; or
- (b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the District's Public Improvement through an alternative process adopted by the District consistent with the provisions of the applicable RFP, if

## **North Clackamas School District Public Contracting Rules**

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

any, and these Division 48 Rules. The District's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the particular procurement of the District, and may include provisions to allow the District to perform its tier-two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The District's alternative process may include, but is not limited to, one or more of the following methods:

- (A) A general Written direction from the District to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements, or during the course of the Procurement or series of Procurements, that the District's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the District is required. However, the District may provide Written notice to the State Contracting Agency that the District's general Written direction is not to be applied for a particular Procurement and describe the process that the District will utilize for the particular Procurement. In order for a Written direction from the District consistent with this Section to be effective for a particular Procurement, it must be received by the Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple Award under the terms of the applicable Procurement, the Written direction from the District may apply to the highest-ranked Proposers that are selected under the terms of the Procurement document.
- (B) An intergovernmental agreement between the District and the Contracting Agency outlining the alternative process that the District has adopted for a Procurement or series of Procurements.
- (C) Where multiple Local Government Contracting Agencies are involved in a two-tiered selection procedure, the Local Government Contracting Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Contracting Agencies, whether the Local Government Contracting Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner, or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple Award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the District to select the highest-ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, or Land Surveyor in accordance with the negotiation provisions in NCSD-48-0200, NCSD-48-0210, or NCSD-48-0220 as applicable.

(5) Nothing in these Division 48 Rules should be construed to deny or limit the District's ability to contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4) through a selection process established by the District.

#### **NCSD-48-0270 Price Agreements**

(1) The District may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services when the District cannot

## **North Clackamas School District Public Contracting Rules**

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

determine the precise quantities of those Services which the District shall require over a specified time period.

- (2)** When establishing Price Agreements under this Rule, the District shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with NCS D-48-0130(1) or NCS D-48-0130(2), as applicable. The District may select a single Consultant when a Price Agreement is Awarded to obtain Services for a specific Project or a closely-related group of Projects.
- (3)** In addition to any other applicable solicitation requirements set forth in these Division 48 Rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

  - (a)** Include a scope of Services, menu of Services, a specification for Services or a similar description of the nature, general scope, complexity, and purpose of the procurement that will reasonably enable a prospective Bidder or Proposer to decide whether to submit a Bid or Proposal;
  - (b)** Specify whether the District intends to Award a Price Agreement to one Consultant or to multiple Consultants. If the District will Award a Price Agreement to more than one Consultant, the Solicitation Document and Price Agreement shall describe the criteria and procedures the District will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the District's sole discretion; provided, however, in circumstances where a direct Contract is not permitted under NCS D-48-0200, the selection criteria cannot be based on pricing policies, pricing Proposals, or other pricing information, including the number of hours proposed for the Services required, expenses, hourly rates, and overhead. In accordance with NCS D-48-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead, and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of NCS D-48-0200; and
  - (c)** Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.
- (4)** All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a Written work order or task order issued by the District. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

  - (a)** The specific scope of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services or Related services to be provided by the Consultant;
  - (b)** The Consultant's performance obligations and performance schedule;
  - (c)** The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order or task order that is fair

## North Clackamas School District Public Contracting Rules

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

and reasonable to the District, as determined solely by the District, taking into account the value, scope, complexity, and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

- (d) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
- (e) Any other provisions the District believes to be in the District's best interest.

#### **NCSD-48-0280 FSCP**

The Superintendent may establish an FSCP for a particular class of Architectural, Engineering, Land Surveying or Related Services where the need for such Services is ongoing in nature, where it is difficult to anticipate the Service need, time, amount, or availability of Contractors, or where Service needs arise so quickly it is not practical or cost-effective to conduct individual solicitations under these Rules. An FSCP shall comply with the following requirements:

- (1) **Solicitation to Create an FSCP.** An FSCP can be established pursuant to an RFQ, an RFP, Competitive Quotes, or such other method of competitive Procurement as the Superintendent deems to be appropriate given the Services to be procured.
  - (a) The Superintendent shall document the reasons for establishing an FSCP consistent with this Rule in the Procurement File. This documentation must be reviewed and approved by the Director of Business Operations as demonstrating that the procurement qualifies for use of an FSCP under these Rules.
  - (b) The solicitation shall describe the class of Contracts that can be Awarded to Contractors in the FSCP. The District may not Award Contracts outside of the designated class of Contracts to the FSCP.
  - (c) The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.
  - (d) The solicitation may request a binding Price Quote or rate that will become part of a subsequent Contract or may establish the pool based on qualifications alone.
  - (e) The solicitation may set or limit the value of the Work to be performed by the FSCP.
- (2) **Contracting for Work from an FSCP.**
  - (a) Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform individual Projects within the established scope of the Work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual Projects will be offered, negotiated, and Awarded sequentially to Contractors on the FSCP list. Once the Superintendent has Offered Work to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may Offer Work out of sequence in the following circumstances:
    - (A) The Contractor that is next on the list declines or is unavailable during the time period needed.
    - (B) Contract negotiations with the next-listed Contractor are not successful.

## **North Clackamas School District Public Contracting Rules**

### **Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract**

- (C) The Project is for Work that is a continuation of, addition to, or is connected with Work previously performed by a Contractor on the list, and such prior experience means that it is in the best interest of the District to Award the Contract to the Contractor that performed the prior Work.
- (D) The nature of the Project is such that the Superintendent determines that an additional analysis of Contractor capability is required. In order to make this determination, the Superintendent shall conduct an informal Procurement pursuant to NCSD-46-0510 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in Writing in the Procurement File.

- (b) An FSCP established under this Section will expire after three years from the date of Closing of the solicitation, unless reestablished as provided in this Rule.
- (c) Appointment to an FSCP does not guarantee that a Contractor will receive a particular amount of Work or any Work at all.
- (d) The establishment of an FSCP does not preclude the Superintendent from procuring Work that would otherwise fall within the FSCP class of Work from other Contractors through any other Procurement method authorized under these Rules.
- (e) At any time during the term of an FSCP, the Superintendent may request confirmation from a Contractor or Contractors in the pool that the Contractor continues to maintain the skills, personnel, or other capability needed to perform the class of Work.

## **POST-SELECTION CONSIDERATIONS**

### **NCSD-48-0300 Prohibited Payment Methodology; Purchase Restrictions**

- (1) Except as otherwise allowed by law, the District shall not enter into any Contract in which:
  - (a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project, and reimbursable expenses incurred during the performance of Work on the Project (sometimes referred to as a "time and materials" Contract); and
  - (b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.
- (2) Except in cases of Emergency or in the particular instances noted in the Sections below, the District shall not purchase any building materials, supplies, or equipment for any building, structure, or facility constructed by or for the District from any Consultant under a Contract with the District to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for the building, structure, or facility. This prohibition does not apply if either of the following circumstances exists:
  - (a) Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with the District to perform Design-Build Services or ESPC Services (see NCSD-49-0670 and NCSD-49-0680); or

## **North Clackamas School District Public Contracting Rules**

### Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract

- (b) That portion of the Contract relating to the acquisition of building materials, supplies, or equipment was Awarded to Consultant pursuant to applicable law governing the Award of such a Contract.

#### **NCSD-48-0310 Expired or Terminated Contracts; Reinstatement**

(1) If the District enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the District may proceed as follows, subject to the requirements of Section (2) of this Rule:

- (a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the District or caused by any other occurrence outside the reasonable control of the District or the Consultant, and if no more than one year has passed since the Contract expiration date, the District may Amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the Amendment, the District and the Consultant shall continue performance under the Contract as Amended; or
- (b) Terminated Contracts. If the District or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the District may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.

(2) The District may proceed under either Sections (1)(a) or (1)(b) of this Rule only after making Written Findings that Amending the existing Contract or entering into a new Contract with the Consultant will:

- (a) Promote efficient use of public funds and resources and result in substantial cost savings to the District;
- (b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the Award of Contracts; and
- (c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

#### **NCSD-48-0320 Contract Amendments**

(1) The District may amend any Contract if the District, in its sole discretion, determines that the Amendment is within the scope of the Solicitation Document and that the Amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the District shall consider potential alternative methods of procuring the Services contemplated under the proposed Amendment. An

**North Clackamas School District Public Contracting Rules**

**Division 48 – Public Contracting Rules for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services Contract**

Amendment would not materially impact the field of competition for the Services described in the Solicitation Document if the District reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional Services.

(2) The District may Amend any Contract if the additional Services are required by reason of existing or new laws, rules, regulations, or ordinances of federal, state, or local agencies which affect performance of the Original Contract.

(3) All Amendments to Contracts must be in Writing, must be Signed by an authorized representative of the Consultant and the District, and must receive all required approvals before the Amendments will be binding on the District.

**END OF DIVISION 48**

**NCSD DIVISION 49**

**DISTRICT PUBLIC CONTRACTING RULES FOR CONTRACTS  
FOR PUBLIC IMPROVEMENTS AND/OR PUBLIC WORKS**

**NCSD-49-0100 Application**

These Division 49 Rules are intended to implement the requirements of ORS 279C in regard to Public Improvements, Public Works, and construction services.

**NCSD-49-0110 Policies**

In addition to the policies of the Code as set forth in ORS 279A.015, the ORS 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these Division 49 Rules.

**NCSD-49-0120 Definitions**

- (1) **"Conduct Disqualification"** means a disqualification pursuant to ORS 279C.440 in accordance with NCSD-49-0370.
- (2) **"Disqualification"** means the preclusion of a Person from contracting with the District for a period of time. Disqualification may be a Conduct Disqualification or DBE Disqualification. The District is authorized to disqualify a Person in accordance with NCSD-49-0370.
- (3) **"Foreign Contractor"** means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See NCSD-49-0490.
- (4) **"Notice"** means any of the alternative forms of Public announcement of Procurements, as described in NCSD-49-0210.
- (5) **"Work"** means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

**NCSD-49-0130 Competitive Bidding Requirement**

The District must solicit Bids for Public Improvement Contracts by Invitation to Bid, except as otherwise allowed or required pursuant to ORS 279C.335 on Competitive Bidding exceptions and exemptions, ORS 279A.030 on federal law overrides, or ORS 279A.100 on affirmative action. Also see NCSD-49-0600 through NCSD-49-0690 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process and the process for obtaining an exemption from competitive bidding requirements.

**NCSD-49-0140 Contracts for Construction Other Than Public Improvements; Emergency Construction Contracts**

- (1) **Procurement Under ORS 279B.** Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts may be procured and Amended as general trade Services under the provisions of ORS 279B rather than under the provisions of ORS 279C and these Division 49 Rules.
- (2) **Emergency Construction Contracts.** Emergency Contracts for construction services are not Public Improvement Contracts and are regulated under ORS 279B.080. See NCSD-49-0150.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**(3) Application of ORS 279C.** Non-procurement provisions of ORS 279C and these Division 49 Rules may still be applicable to the resulting Contracts. See, for example, particular statutes on disqualification (ORS 279C.440, 445, and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520, and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560, and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620, and 625); Termination (ORS 279C.650, 655, 660, and 670); and all of the Prevailing Rate of Wage requirements (ORS 279C.800 through 870) for Public Works Contracts.

**NCSD-49-0145 Exemptions From Competitive Bidding**

**(1) Specific Exemptions for Individual Contracts.** Contracts that have been specifically exempted under ORS 279C.335(2) are as follows:

- (a) Contracts made with qualified nonprofit agencies providing employment opportunities for individuals with disabilities under ORS 279.835 through 279.855.
- (b) A Public Improvement Contract exempt under Section (2) of this Rule.
- (c) A Public Improvement Contract with a value of less than \$25,000.
- (d) A Contract not to exceed \$100,000 made under procedures for Competitive Quotes in NCSD-49-0160.
- (e) Energy savings performance Contracts entered into in accordance with rules of procedure adopted under ORS 279A.065.

**(2) Contracts Approved Pursuant to a Request for Exemption for an Individual Contract or Class of Contracts.**

- (a) The Superintendent may request a resolution from the Contract Review Board exempting a particular Public Improvement Contract or class of Public Improvement Contracts from Competitive Bidding if the Contract or Contracts are not otherwise exempted under these Rules.
- (b) When requesting a class exemption, the Superintendent must clearly identify the class based on the class's defining characteristics, including some combination of Project descriptions or locations, time periods, Contracting values, methods of Procurement, or other factors that distinguish the limited and related class of Public Improvements from the District's overall construction program. The Superintendent or Contract Review Board may not define a class exemption solely by funding source (e.g., a bond fund) or by method of Procurement (e.g., RFP or CM/GC).
- (c) Any approved class exemption shall be added to NCSD-49-0146.

**(3) Contents of Exemption Request.** Exemption requests must contain the following:

- (a) The nature of the Project;
- (b) Estimated cost of the Project;
- (c) Findings supporting why it is unlikely that an exemption from Competitive Bidding would encourage favoritism or diminish competition for the Public Contract as required by ORS 279C.335(2)(a);
- (d) Findings supporting that the exemption will likely result in substantial cost savings to the District as required by ORS 279C.335(2)(b) or is a pilot Project for which the District intends to determine whether the use of an Alternative Contracting Method actually results in substantial cost savings;
- (e) Information regarding the following factors as required by ORS 279C.330:

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (A) Operational, budget, and financial data;
  - (B) Public benefits;
  - (C) Value Engineering;
  - (D) Specialized expertise required;
  - (E) Public safety;
  - (F) Market conditions;
  - (G) Technical complexity; and
  - (H) Funding sources.
- (f) Proposed Alternative Contracting and Purchasing practices to be employed; and
- (g) The estimated date by which it would be necessary to let the Contract.
- (4) Hearing Permitted.**
- (a) The Contract Review Board may hold a public hearing prior to adoption of an exemption resolution.
  - (b) Notification of the public hearing must be published in at least one trade newspaper of general statewide circulation at least 14 Days before the hearing.
  - (c) The Notice must state that the public hearing is for the purpose of taking comments on the District's draft Findings for an exemption from the Competitive Bidding requirement. At the time of the Notice, copies of the draft Findings must be made available to the public.
  - (d) At the public hearing, the District must offer an opportunity for any interested party to appear and present comment.
  - (e) If the District is required to act promptly due to circumstances beyond its control that do not constitute an Emergency, notification of the public hearing can be published simultaneously with the District's solicitation of Contractors for the Alternative Public Contracting method, as long as responses to the solicitation are due at least five Days after the hearing and approval of the resolution adopting the Findings.

**NCSD-49-0146 Class Exemptions; Public Improvement Contracts**

The Local Contract Review Board declares the following Contracts listed in this Section as classes of Public Improvement Contracts exempt from Competitive Bidding.

- (1) Donated Public Improvements.** The Superintendent may authorize a Person to construct a Public Improvement without Competitive Bidding or other Competitive process and regardless of dollar amount, if:
- (a) The Person has agreed to donate all or a significant portion of the materials or Services necessary to construct the Public Improvement or perform the Service; and
  - (b) The Person enters into a license or agreement with the District whereby the Person agrees to comply with the Public Contract requirements applicable to the particular Project and any requirements that the District deems necessary or beneficial to protect the District.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**(2) Purchases under Contracts Solicited by Nonprofit Procurement Organizations of Which the District is a Member.** The Superintendent may purchase Public Improvements under a Contract or Procurement solicited by a Nonprofit Procurement Organization of which it is a member. For the purposes of this Special Procurement, such a Nonprofit Procurement Organization will be considered a "Contracting Purchasing Group" under NCSD-46-0400 through NCSD-46-0480, and a Procurement must comply with the requirements for Joint Cooperative Procurements pursuant to NCSD-46-0420.

**(3) FSCP.** The Superintendent may establish an FSCP for a particular class of Public Improvements where the need for such Work is ongoing in nature, where it is difficult to anticipate the Service need, time, amount, or availability of Contractors, or where Service needs arise so quickly that it is not practical or cost-effective to conduct individual solicitations under these Rules. An FSCP shall comply with the following requirements:

- (a) Solicitation to Create an FSCP.** An FSCP for Public Improvements shall be solicited based on the total cost of the Work estimated to be Awarded through the FSCP during its life. If the total amount of the Work is estimated to be over \$100,000, the Superintendent shall use a formal RFQ process pursuant to NCSD-49-0645 or an RFP process pursuant to NCSD-49-0650. If the total amount of the Work is \$100,000 or less, the FSCP may be solicited pursuant to the Intermediate Procurement process set forth in NCSD-49-0160.

  - (A)** The Superintendent shall document the reasons for establishing an FSCP consistent with this Rule in the Procurement File. This documentation must be reviewed and approved by the Director of Business Operations as demonstrating that the Procurement qualifies for use of an FSCP under these Rules.
  - (B)** The solicitation shall describe the class of Contracts that can be Awarded to Contractors in the FSCP. The District may not Award Contracts outside of the designated class of Contracts to the FSCP.
  - (C)** The solicitation shall set forth the number of Contractors that will be appointed to the FSCP, the selection criteria, and the methodology for ranking the requests and selecting the Contractors to be appointed to the pool.
  - (D)** The solicitation may request a binding Price Quote or time and materials rate that will become part of a subsequent Contract or may establish the pool based on qualification alone.
  - (E)** The solicitation may set or limit the value of the work performed by the FSCP.
- (b) Contracting for Work from an FSCP.** Once an FSCP has been established, the Superintendent may negotiate Contracts directly with Contractors in the pool to perform specific Work within the established scope of the Work. Upon creation of the FSCP, the Superintendent will generate a random list of names of the Contractors appointed to the FSCP. Contracts for individual Work will be Offered, negotiated, and Awarded sequentially to Contractors on the FSCP list. Once the Superintendent has Offered a Contract to all the Contractors in the FSCP (whether or not some or all of the Contractors have accepted the Offer), a new random FSCP list will be generated. The Superintendent may offer a Contract to Contractors out of sequence in the following circumstances:

  - (A)** The Contractor that is next on the list declines or is unavailable during the time period needed.
  - (B)** Contract negotiations with the next-listed Contractor are not successful.
  - (C)** The Project is for a Public Improvement that is a continuation of, an addition to, or connected with a Public Improvement previously constructed by a Contractor on the list, and

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

such prior experience means that it is in the best interest of the District to Award the Contract to the Contractor that performed the prior Work or provided the prior Goods.

- (D) The nature of the Project is such that the Superintendent determines that an additional analysis of Contractor capability or capacity is required. In order to make this determination, the Superintendent shall conduct an Intermediate Procurement pursuant to NCSD-49-0160 limited to Contractors in the FSCP.

If a Contractor is selected outside of the sequence, the reason shall be documented in Writing in the Procurement File.

- (c) An FSCP established under this Section will expire after three years from the date of Closing of the solicitation, unless reestablished as provided in this Rule.
- (d) Appointment to an FSCP does not guarantee that a contractor will receive a particular amount of work or orders or any work or orders at all.
- (e) The establishment of an FSCP does not preclude the Superintendent from procuring public improvements that would otherwise fall within the FSCP from other contractors through any other Procurement method authorized under these Rules.
- (f) At any time during the term of an FSCP, the Superintendent may request confirmation from a contractor or contractors in the pool that the Contractor continues to maintain the skills, personnel, inventory or other capability needed to perform the class of work or provide the required goods.
- (g) If an FSCP for public improvements is reasonably estimated to include Projects that will total over \$50,000 during the life of the FSCP, public improvement contracts Awarded to Contractors on an FSCP list shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

**(4) Price Agreements.**

- (a) Price Agreements may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining District requirements for volume discounts, creating standardization among agencies, and reducing lead time for ordering. The Superintendent may enter into Price Agreements to purchase Public Improvements for an anticipated need at a predetermined price, but the Contract must be solicited by a Competitive Procurement process pursuant to the requirements of these Rules based on the total Contract Price.
- (b) The Superintendent may purchase Public Improvements from a Contractor Awarded a Price Agreement without first undertaking additional competitive solicitation up to the amount set forth in the Price Agreement.
- (c) The Superintendent may use the Price Agreement entered into by another Oregon Public Agency when the Original Contract was let pursuant to NCSD-46-0420.
- (d) The term of the Price Agreement, including renewals, may not exceed the term stated in the original solicitation.
- (e) If a Price Agreement for Public Improvements will exceed the prevailing wage threshold in place at the time of the Agreement over the term of the Agreement, the Contract shall require the payment of prevailing wages pursuant to ORS 279C.800 through 279C.870.

**(5) Expedited Contracting Process in Order to Access State, Federal, or Grant Funding.** The Superintendent may waive any or all of the solicitation procedures under this Division 49 in the following circumstances:

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (a) The state or federal government or granting entity has adopted a funding program or made funding available to assist the District in constructing Public Improvements and has attached a time deadline to have a Contract in place, a Project underway, or a Project completed in order for the District to access or be eligible for those funds. Such programs include, without limitation, the American Recovery and Reinvestment Act of 2009 (“ARRA”) and similar programs.
- (b) The Superintendent determines that compliance with the solicitation procedures in this Division 49 could jeopardize the District’s ability to access or be eligible for such funding under the timeline established by the state or federal government or granting entity.
- (c) The Superintendent provides for an alternative contracting process.
- (d) The reasons for and extent of the waiver are documented in the Procurement File.
- (e) Notwithstanding NCSD-45-0200, the School Board hereby authorizes the Superintendent to enter into and approve payment on Contracts subject to this exemption in any dollar amount, but will report the nature and amount of the Contract to the School Board if the Contract is over the Superintendent’s delegated authority as set forth in NCSD-45-0200(4)(b)(A).

**NCSD-49-0150 Emergency Contracts; Bidding and Bonding Exemptions**

- (1) **Emergency Declaration.** The Superintendent may declare that emergency circumstances exist that require prompt execution of a Public Contract for emergency construction or repair Work. The declaration shall be by a Written declaration that describes the circumstances creating the emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency Declaration shall be kept on file as a public record.
- (2) **Competition for Emergency Contracts.** Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an Emergency Procurement of construction services, the District shall ensure competition that is reasonable and appropriate under the emergency circumstances, and may include Written Requests for Offers, oral Requests for Offers, or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Superintendent considers reasonable in responding to the Emergency.
- (3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the emergency as described in the declaration.
- (4) **Emergency Contract Modification.** Emergency Contracts may be modified by Change Order or Amendment to address the conditions described in the original declaration or an Amended declaration that further describes additional Work necessary and appropriate for related emergency circumstances.
- (5) **Excusing Bonds.** Pursuant to ORS 279C.380(4) and this Rule, the Emergency Declaration may also state that the District waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency Declaration, those bonding requirements are excused for the Procurement, but this Emergency Declaration does not affect the separate Public Works bond requirement for the benefit of BOLI in enforcing prevailing wage rate and overtime payment requirements. See NCSD-49-0815 and BOLI rules at OAR 839-025-0015.

**NCSD-49-0160 Intermediate Procurements; Competitive Quotes and Amendments**

- (1) **General.** Public Improvement Contracts estimated by the District not to exceed \$100,000 may be Awarded in accordance with Intermediate-level Procurement procedures for Competitive Quotes established by this Rule.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (2) **Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, Project understanding, Contractor capacity, responsibility, and similar factors.
- (3) **Request for Quotes.** The District must utilize Written Requests for Quotes whenever reasonably practicable. Written Requests for Quotes must include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting Quotes orally, prior to requesting the Price Quote the District shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotes may only be utilized in the event that Written copies of or references to the prevailing wage rates are not required by BOLI (e.g., if the Contract is under the current applicable threshold or is not otherwise subject to payment of prevailing wages).
- (4) **Number of Quotes; Record Required.** The District must seek at least three Competitive Quotes and keep a Written record of the sources and amounts of the Quotes received. If three Quotes are not reasonably available, the District must make a Written record of the effort made to obtain those Quotes.
- (5) **Award.** If Awarded, the District must Award the Contract to the prospective Contractor whose Quote will best serve the interests of the District, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the District must make a Written record of the basis for Award.
- (6) **Price Increases.** Intermediate-level Public Improvement Contracts obtained by Competitive Quotes may be increased above the original amount of Award by the District's issuance of a Change to the Work or Amendment, pursuant to NCS-49-0910, within the following limitations:
- (a) Up to an aggregate Contract Price increase of 25% over the Original Contract amount when the District's contracting officer determines that a price increase is warranted for additional reasonably related Work;
  - (b) Up to an aggregate Contract Price increase exceeding 25% over the Original Contract amount but less than \$100,000, when the District's contracting officer determines that a price increase is warranted for additional reasonably related Work and the District official with administrative or review authority over the contracting officer approves the increase; and
  - (c) Exceeding an aggregate Contract Price of \$100,000 and 50% over the Original Contract amount, when the District's Contracting Officer and the District Official with administrative or review authority over the contracting officer determine that a price increase is warranted for additional reasonably related Work, and the District's Local Contract Review Board approves the increase. The request for approval filed with the Local Contract Review Board shall contain an explanation of why the estimated contract price that was the basis for the intermediate procurement was exceeded.
- (7) **Amendments.** Amendments of Intermediate-level Public Improvement Contracts that exceed the thresholds stated in Section (1) of this Rule are specifically authorized by the Code when made in accordance with this Rule. Accordingly, such Amendments are not considered new Procurements and do not require an exemption from Competitive Bidding.

**FORMAL PROCUREMENT RULES**

**NCS-49-0200 Solicitation Documents; Required Provisions; Assignment or Transfer**

- (1) **Solicitation Document.** Pursuant to ORS 279C.365 and this Rule, the Solicitation Document must include the following:
- (a) General Information.

## North Clackamas School District Public Contracting Rules

### Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (A) Identification of the Public Improvement Project, including the character of the Work, and applicable plans, specifications, and other Contract Documents;
- (B) Notice of any pre-Offer conference as follows:
  - (i) The time, date, and location of any pre-Offer conference; and
  - (ii) Whether attendance at the conference will be mandatory or voluntary; and
  - (iii) That statements made by the District's representatives at the conference are not binding on the District unless confirmed by Written Addendum.
- (C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;
- (D) The name and title of the District Person designated for receipt of Offers and the contact Person (if different);
- (E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See NCSD-49-0300 regarding Facsimile Bids or Proposals and NCSD-49-0310 regarding Electronic Procurement);
- (F) The time, date, and place of Opening;
- (G) The time and date of Closing after which the District will not accept Offers, which time must be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, the District is encouraged to use at least a 14-Day solicitation period when feasible. If the District is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the District must designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and NCSD-49-0360. For timing issues relating to Addenda, see NCSD-49-0250;
- (H) The office where the Specifications for the Work may be reviewed;
- (I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;
- (J) If the Contract resulting from a solicitation will be a Contract for a Public Work subject to ORS 279C.800 through 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148, a statement that no Offer will be received or considered by the District unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, ORS 279C.840, or 40 U.S.C. 3141 to 3148";
- (K) A statement that the District will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board or is licensed by the State Landscape Contractors Board as specified in NCSD-49-0230;
- (L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
- (M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See NCSD-49-0440(3));
- (N) How the District will notify Offerors of Addenda and how the District will make Addenda available (see NCSD-49-0250); and

## North Clackamas School District Public Contracting Rules

### Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in NCS-49-0360.
- (b) Evaluation Process.
  - (A) A statement that the District may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all Offers after finding that doing so is in the public interest.
  - (B) The anticipated solicitation schedule, deadlines, protest process, and evaluation process, if any;
  - (C) Evaluation criteria, including the relative value applicable to each criterion, that the District will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and NCS-49-0620), along with the process the District will use to determine acceptability of the Work;
  - (D) If the Solicitation Document is an Invitation to Bid, the District must set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, and ownership or Life-Cycle Cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but to the extent possible, such evaluation factors must be objective, reasonable estimates based on information the District has available concerning future use; and
  - (E) If the Solicitation Document is a Request for Proposals, the District must refer to the additional requirements of NCS-49-0650; and
- (c) Contract Provisions. The District must include all Contract terms and conditions, including warranties, insurance, and bonding requirements, that the District considers appropriate for the Public Improvement Project. The District must also include all applicable Contract provisions required by Oregon law as follows:
  - (A) Prompt payment to all Persons supplying labor or material, contributions to Industrial Accident Fund, and liens and withholding taxes (ORS 279C.505(1));
  - (B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
  - (C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
  - (D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective (ORS 279C.510(2));
  - (E) Payment of claims by public officers (ORS 279C.515(1));
  - (F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
  - (G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
  - (H) Hours of labor in compliance with ORS 279C.520;

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (I) Environmental and natural resources regulations (ORS 279C.525);
- (J) Payment for medical care and attention to employees (ORS 279C.530(1));
- (K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon must comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor must ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));
- (L) Maximum hours, holidays, and overtime (ORS 279C.540);
- (M) Time limitation on claims for overtime (ORS 279C.545);
- (N) Prevailing wage rates (ORS 279C.800 through 279C.870);
- (O) BOLI Public Works Bond (ORS 279C.830(2))
- (P) Retainage (ORS 279C.550 through 279C.570);
- (Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- (R) Contractor's relations with subcontractors (ORS 279C.580);
- (S) Notice of claim (ORS 279C.605);
- (T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
- (U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 through 701.055 before the subcontractors commence Work under the Contract.

**(2) Assignment or Transfer Restricted.** Unless otherwise provided in the Contract, the Contractor must not assign, sell, dispose of or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the District's prior Written consent. Unless otherwise agreed by the District in Writing, such consent must not relieve the Contractor of any obligations under the Contract. Any assignee or transferee must be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the District consents in Writing to an assignment, sale, disposal, or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, must remain liable to the District for complete performance of the Contract as if no such assignment, sale, disposal, transfer, or delegation had occurred unless the District otherwise agrees in Writing.

**NCSD-49-0210 Notice and Advertising Requirements; Posting**

**(1) Notice and Distribution Fee.** The District shall furnish Notice as set forth below in Sections (1)(a) through (1)(c) to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice shall indicate where, when, how, and for how long the Solicitation Document may be obtained and generally describe the Public Improvement Project or Work. The Notice may contain any other appropriate information. The District may charge a fee or require a deposit for the Solicitation Document. The District may furnish Notice using any method determined to foster and promote competition, including:

- (a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the District's Procurements;
- (b) Placing Notice on the OregonBuys website; or

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

(c) Placing Notice on the District's Internet Web site or Electronic Procurement system.

**(2) Advertising.** Pursuant to ORS 279C.360 and this Rule, the District shall advertise every solicitation for Competitive Bids or Competitive Proposals for a Public Improvement Contract, unless the Contract Review Board has exempted the solicitation from the advertisement requirement as part of a Competitive Bidding exemption under ORS 279C.335.

- (a) Unless the District publishes by Electronic Advertisement as permitted under Section (2)(b) of this Rule, the District shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the District may determine to be necessary or desirable to foster and promote competition.
- (b) The District may publish by Electronic Advertisement if the Contract Review Board determines that Electronic Advertisement is likely to be cost-effective and, by Rule or order, authorizes Electronic Advertisement.
- (c) In addition to the District's publication required under Sections (2)(a) or (2)(b), the District shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.
- (d) All advertisements for Offers shall set forth:
  - (A) The Public Improvement Project;
  - (B) The office where Contract terms, conditions, and Specifications may be reviewed;
  - (C) The date that Persons must file applications for prequalification under ORS 279C.340, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;
  - (D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;
  - (E) The name, title, and address of the District Person authorized to receive Offers;
  - (F) The scheduled Opening; and
  - (G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 through 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

**NCSD-49-0220 Prequalification of Offerors**

**(1) Prequalification.** Pursuant to ORS 279C.430 and this Rule, two types of prequalification are authorized:

- (a) Mandatory Prequalification. The District may require mandatory prequalification of Offerors. The District must indicate in the Solicitation Document if it will require mandatory prequalification. Mandatory prequalification is when the District conditions a Person's submission of an Offer on the Person's prequalification. The District must not consider an Offer from a Person that is not prequalified if the District required prequalification.
- (b) Permissive Prequalification. The District may prequalify a Person for the District's solicitation list, but in permissive prequalification the District must not limit distribution of a solicitation to that list.
- (c) Prequalification Procedure. When prequalification is required or allowed, a Person shall submit a prequalification application to the District on the form prescribed by the District. The District

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

shall determine if the applicant is qualified within 30 Days of the date of application, or sooner if practicable and so requested by the applicant to enable the applicant to participate in Bidding on an advertised Contract. If the District finds that the applicant is qualified, the District will provide Notice to the applicant of the nature and type of Contracts the applicant is qualified to Bid on and the period of time for which the qualification is valid.

- (2) **Prequalification Presumed.** If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror must be rebuttably presumed qualified to perform similar Work for the District. When qualifying for the same kind of Work for the District, the Person may submit proof of the prequalification in lieu of a prequalification application under Section (1) of this Rule.
- (3) **Standards for Prequalification.** A Person may prequalify by demonstrating to the District's satisfaction that:
- (a) The Person's financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;
  - (b) The Person's record of performance;
  - (c) The Person's record of integrity;
  - (d) The Person is qualified to contract with the District. (See NCSD-49-0390(2) regarding standards of responsibility.)
- (4) **Notice Of Denial.** If a Person fails to prequalify for a mandatory prequalification, the District must notify the Person and specify the reasons under Section (3) of this Rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450 as provided in Section (6) of this Rule.
- (5) **Revocation of Prequalification.** If the District has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified Person and that the Person is no longer qualified or is less qualified, the District may revoke or revise and reissue the prequalification after reasonable Notice to the prequalified Person. The Notice shall specify the reasons under Section (3) of this Rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450 as provided in Section (6) of this Rule.
- (6) **Appeal of Denial or Revocation of, or Revision to Prequalification.**
- (a) Any Person who wishes to appeal the District decision under Sections (4) or (5) of this Rule shall, within three business Days after receipt of the Notice of disqualification, file Written Notice with the District that Person appeals the decision. The District shall notify the Contract Review Board and schedule the appeal hearing before the Contract Review Board.
  - (b) Immediately upon receipt of the prospective Bidder's or Proposer's Notice of appeal, the District shall notify the local Contract Review Board.
  - (c) Upon the receipt of Notice from the District under Section (2) of this Rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 Days after receiving the Notice from the District. The Contract Review Board shall set forth in Writing the reasons for the hearing decision.
  - (d) At the hearing the Contract Review Board shall consider de novo the Notice of denial, revocation or revision of a prequalification, the standards listed in Section (3) of this Rule on which the District based the decision, and any evidence provided by the parties. Hearings before a Contract

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.

- (e) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:
  - (A) If the decision to deny, revoke, or revise a prequalification of a Person as a Bidder is upheld, the cost shall be paid by the Person appealing the decision.
  - (B) If the decision to deny, revoke, or revise a prequalification of a Person as a Bidder is reversed, the costs shall be paid by the District.
- (f) Judicial review of any decision by the Contract Review Board shall be as set forth in ORS 279C.450.

**NCSD-49-0230 Eligibility to Bid or Propose; Registration or License**

- (1) **Construction Contracts.** The District must not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made.
- (2) **Landscape Contracts.** The District must not consider a Person's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape Contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the Offer is made.
- (3) **Non-complying Entities.** The District must deem an Offer received from a Person that fails to comply with this Rule Non-Responsive and must reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding or the District.

**NCSD-49-0240 Pre-Offer Conferences**

- (1) **Purpose.** The District may hold pre-Offer conferences with prospective Offerors prior to Closing to explain the Procurement requirements, obtain information, or conduct site inspections.
- (2) **Required Attendance.** The District may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of the Offering firm is present.
- (3) **Scheduled Time.** If the District holds a pre-Offer conference, it must be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by the District's representative at the pre-Offer conference do not change the Solicitation Document unless the District confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **District Announcement.** The District must set forth Notice of any pre-Offer conference in the Solicitation Document in accordance with NCSD-49-0200(1)(a)(B).

**NCSD-49-0250 Addenda to Solicitation Documents**

- (1) Issuance; Receipt.** The District may change a Solicitation Document only by Written Addenda. An Offeror must provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the District otherwise specifies in the Addenda or in the Solicitation Document.
- (2) Notice and Distribution.** The District must notify prospective Offerors of Addenda consistent with the standards of Notice set forth in NCSD-49-0210(1). The Solicitation Document must specify how the District will provide Notice of Addenda and how the District will make the Addenda available (see NCSD-49-0200(1)(a)(N). For example, "The District will not mail Notice of Addenda, but will publish Notice of any Addenda on the District's Web site. Addenda may be downloaded off the District's Web site. Offerors should frequently check the District's Web site until Closing, i.e., at least once weekly until the week of Closing, and at least once daily during the week of the Closing."
- (3) Timelines; Extensions.** The District must issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The District may extend the Closing if the District determines that prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the District must not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
- (4) Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in NCSD-49-0260, by the close of the District's next business Day after issuance of the Addendum, or up to the last Day allowed to submit a request for change or protest under NCSD-49-0260, whichever date is later. The District must consider only an Offeror's request for change or protest to the Addendum; the District must not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the District's receipt of request for change or protests as set forth in NCSD-49-0260(2) and (3).

**NCSD-49-0260 Request for Clarification or Change; Solicitation Protests**

- (1) Clarification.** Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the District clarify any provision of the Solicitation Document. The District's clarification 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.
- (2) Request for Change.**

  - (a) Delivery.** An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the District not less than seven Days prior to Closing;
  - (b) Content of Request for Change.**

    - (A)** An Offeror's Written request for change must include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.
    - (B)** An Offeror must mark its request for change as follows:

      - (i)** "Contract Provision Request for change"; and
      - (ii)** Solicitation Document number (or other identification as specified in the Solicitation Document).

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**(3) Protest.**

**(a) Delivery.** An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the District not less than seven Days prior to Closing.

**(b) Content of Protest.**

**(A)** An Offeror's Written protest must include:

- (i)** A detailed statement of the legal and factual grounds for the protest;
- (ii)** A description of the resulting prejudice to the Offeror; and
- (iii)** A statement of the desired changes to the Contract terms and conditions, including any Specifications.

**(B)** An Offeror must mark its protest as follows:

- (i)** "Contract Provision Protest"; and
- (ii)** Solicitation Document number (or other identification as specified in the Solicitation Document).

**(4) The Response.** The District is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The District must provide Notice to the applicable Person if it entirely rejects a protest. If the District agrees with the Person's request or protest, in whole or in part, the District must either issue an Addendum reflecting its determination under NCSD-49-0260 or cancel the solicitation under NCSD-49-0270.

**(5) Extension of Closing.** If the District receives a Written request for change or protest from an Offeror in accordance with this Rule, the District may extend Closing if the District determines that an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

**(6) Failure to Protest or Request a Change Precludes Protest of Award on Such Issue.** An Offeror cannot protest an Award based on any issue that could have, but was not, raised as a Request for Change or Protest of solicitation.

**NCSD-49-0270 Cancellation of Solicitation Document**

**(1) Cancellation in the Public Interest.** The District may cancel a solicitation for good cause if the District finds that cancellation is in the public interest. The District's reasons for cancellation must be made part of the Procurement File.

**(2) Notice of Cancellation.** If the District cancels a solicitation prior to Opening, the District must provide Notice of cancellation in accordance with NCSD-49-0210(1). Such Notice of cancellation must:

- (a)** Identify the solicitation;
- (b)** Briefly explain the reason for cancellation; and
- (c)** If appropriate, explain that an opportunity will be given to compete on any re-solicitation.

**(3) Disposition of Offers.**

**(a) Prior to Offer Opening.** If the District cancels a solicitation prior to Offer Opening, the District will return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the District will open the Offer to determine the source and then return it to the Offeror.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (b) After Offer Opening. If the District rejects all Offers, the District will retain all such Offers as part of the District's Procurement File.

**NCSD-49-0280 Offer Submissions**

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract.

- (a) In Competitive Bidding and Competitive Proposals, the Offer is always a "Firm Offer," i.e., the Offer must be held open by the Offeror for the District's acceptance for the period specified in NCSD-49-0410. The District may elect to accept the Offer at any time during the specified period, and the District's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.
- (b) Notwithstanding the fact that a Competitive Proposal is a "Firm Offer" for the period specified in NCSD-49-0410, the District may elect to discuss or negotiate certain Contractual provisions, as identified in these Rules or in the Solicitation Document, with the Proposer. See NCSD-49-0650 on Requests for Proposals and NCSD-49-0290 on Bid or Proposal Security. Where negotiation is permitted by the Rules or the Solicitation Document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the Rules or the Solicitation Document has reserved for negotiation. In Competitive Proposals, the Solicitation Document must describe whether Offers are to be made and considered as "Firm Offers" that may be accepted without negotiation, as in the case of Competitive Bidding, or whether Offers are subject to discussion, negotiation, or otherwise are not to be considered as final Offers. See NCSD-49-0650 on Requests for Proposals and NCSD-49-0290 on Bid or Proposal Security.

(2) **Responsive Offer.** The District may Award a Contract only to a Responsible Offeror with a Responsive Offer.

(3) **Contingent Offers.** Except to the extent that an Offeror is authorized to Propose certain terms and conditions pursuant to NCSD-49-0650, an Offeror must not make an Offer contingent upon the District's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(4) **Offeror's Acknowledgement.** By signing and returning the Offer, the Offeror acknowledges that they have read and understand the terms and conditions contained in the Solicitation Document and that they accept and agree to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits Proposal of alternative terms under NCSD-49-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any Proposed terms and conditions offered for negotiation upon and to the extent accepted by the District in Writing.

(5) **Instructions.** An Offeror must submit and Sign the Offer in accordance with the Solicitation Document. An Offeror must initial and submit any corrections or erasures to their Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.

(6) **Forms.** An Offeror must submit the Offers on the form(s) provided in the Solicitation Document, unless Offerors are otherwise instructed in the Solicitation Document.

(7) **Documents.** An Offeror must provide the District with all documents and Descriptive Literature required under the Solicitation Document.

(8) **Facsimile or Electronic Submissions.** If the District permits Facsimile or Electronic Offers in the Solicitation Document, the Offeror may submit Facsimile or Electronic Offers in accordance with the Solicitation Document. The District will not consider Facsimile or Electronic Offers unless authorized by the Solicitation Document.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**(9) Product Samples and Descriptive Literature.** The District may require Product Samples or Descriptive Literature if it is necessary or desirable to evaluate the quality, features, or characteristics of the offered items. The District will dispose of Product Samples or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.

**(10) Identification of Offers.**

- (a) To ensure proper identification and handling, Offers must be submitted in a sealed envelope appropriately marked or in the envelope provided by the District, whichever is applicable.
- (b) The Offeror is responsible for submitting Offers in the manner, format, and to the delivery point required in the Solicitation Document.

**(11) Receipt of Offers.** The Offeror is responsible for ensuring that the District receives the Offers at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

**NCSD-49-0290 Bid or Proposal Security**

**(1) Security Amount.** If the District requires Bid or Proposal security, it must be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. The District must not use Bid or Proposal security to discourage competition. The District must clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror must forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond and Payment Bond and, in the case of Proposal security, with any required proof of insurance. See ORS 279C.365(5) and ORS 279C.385.

**(2) Requirement for Bid Security (Optional for Proposals).** Unless the District has otherwise exempted a solicitation or class of solicitations from Bid security pursuant to ORS 279C.390, the District must require Bid security for its solicitation of Bids for Public Improvements. The District may require Bid security even if it has exempted a class of solicitations from Bid security. The District may require Proposal security in RFPs. See ORS 279C.400(5).

**(3) Form of Bid or Proposal Security.** The District may accept only the following forms of Bid or Proposal security:

- (a) A surety bond from a surety company authorized to do business in the State of Oregon;
- (b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
- (c) A cashier's check or Offeror's certified check.

**(4) Return of Security.** The District must return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds have been provided, or after all Offers have been rejected. The District may return the Bid or Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest-scoring Proposals, is retained pending execution of a Contract.

**NCSD-49-0300 Facsimile Bids and Proposals**

**(1) District Authorization.** The District may authorize Offerors to submit Facsimile Offers. If the District determines that Bid or Proposal security is or will be required, the District must not authorize Facsimile Offers unless the District has established a method for receipt of such security. Prior to authorizing the submission of Facsimile Offers, the District must determine that the District's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the District must establish administrative procedures and controls:

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (a) To receive, identify, record, and safeguard Facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as Sealed.

**(2) Provisions To Be Included in Solicitation Document.** In addition to all other requirements, if the District authorizes a Facsimile Offer for Bids or Proposals, the District must include in the Solicitation Document (other than in an RFQ) the following:

- (a) A provision substantially in the form of the following: "A 'Facsimile Offer' as used in this Solicitation Document means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the District via a facsimile machine";
- (b) A provision substantially in the form of the following: "Offerors may submit Facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";
- (c) A provision that requires Offerors to Sign their Facsimile Offers;
- (d) A provision substantially in the form of the following: "The District reserves the right to Award the Contract solely on the basis of the Facsimile Offer." However, upon the District's request, the apparent successful Offeror must promptly submit its complete original Signed Offer; and
- (e) The data and compatibility characteristics of the District's receiving facsimile machine as follows:
  - (A) Telephone number; and
  - (B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and
- (f) A provision that the District is not responsible for any failure attributable to the transmission or receipt of the Facsimile Offer including, but not limited to, the following:
  - (A) Receipt of garbled or incomplete documents;
  - (B) Availability or condition of the receiving facsimile machine;
  - (C) Incompatibility between the sending and receiving facsimile machine;
  - (D) Delay in transmission or receipt of documents;
  - (E) Failure of the Offeror to properly identify the Offer documents;
  - (F) Illegibility of Offer documents; and
  - (G) Security and confidentiality of data.

**NCSD-49-0310 Electronic Procurement**

**(1) General.** The District may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post Notices of intent to Award electronically as provided by ORS 279C.410(7).

**(2) Alternative Procedures.** In the event that the District desires to allow Electronic Offers for a Public Improvement Contract, the District will comply with NCSD-47-0330 (Electronic Procurement under ORS 279B), taking into account ORS 279C requirements for Written Bids, opening Bids publicly, Bid security, first-tier subcontractor disclosure, and inclusion of prevailing wage rates.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**(3) Interpretation.** Nothing in this Rule must be construed as prohibiting the District from making Procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy. See ORS 279C.365(2).

**NCSD-49-0320 Pre-Closing Modification or Withdrawal of Offers**

**(1) Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror must prepare and submit any modification to its Offer to the District in accordance with NCSD-49-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror must mark the submitted modification as follows:

- (a) Bid (or Proposal) modification; and
- (b) Solicitation number (or other identification as specified in the Solicitation Document).

**(2) Withdrawals.**

- (a) An Offeror may withdraw its Offer by Written Notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the District prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;
- (b) The District may release an unopened Offer withdrawn under Section (2)(a) of this Rule to the Offeror or its authorized representative after voiding any date and time-stamp mark;
- (c) The Offeror must mark the Written request to withdraw an Offer as follows:
  - (A) Bid (or Proposal) withdrawal; and
  - (B) Solicitation number (or other identification as specified in the Solicitation Document).

**(3) Documentation.** The District must include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement File.

**NCSD-49-0330 Receipt, Opening, and Recording of Offers; Confidentiality of Offers**

**(1) Receipt.** The District must electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The District must not open the Offer or modification upon receipt, but must maintain it as confidential and secure until Opening. If the District inadvertently opens an Offer or a modification prior to the Opening, the District must return the Offer or modification to its secure and confidential state until Opening. The District must document the resealing for the Procurement File (e.g., "The District inadvertently opened the Offer due to improper identification of the Offer").

**(2) Opening and Recording.** The District must publicly open Offers, including any modifications made to the Offer, pursuant to NCSD-49-0320. In the case of Invitations to Bid, to the extent practicable, the District must read aloud the name of each Bidder, the Bid price(s), and such other information as the District considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the District will not read Offers aloud.

**(3) Availability.** After Opening, the District must make Bids available for public inspection, but pursuant to ORS 279C.410, Proposals are not required to be available for public inspection until after the Notice of Intent to Award is issued. In any event, the District may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 through 646.475. To the extent that the District determines such

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

designation is not in accordance with applicable law, the District must make those portions available for public inspection. The Offeror must separate information designated as confidential from other non-confidential information at the time of submitting its Offer. Prices, makes, models, or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and must be publicly available regardless of an Offeror's designation to the contrary.

**NCS-49-0340 Late Bids, Late Withdrawals, and Late Modifications**

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. The District will not consider late Offers, withdrawals, or modifications except as permitted in NCS-49-0350 or NCS-49-0390.

**NCS-49-0350 Mistakes**

**(1) Generally.** To protect the integrity of the Competitive Procurement process and to ensure fair treatment of Offerors, the District should carefully consider whether to permit waiver, correction, or withdrawal of Offers for certain mistakes.

**(2) District Treatment of Mistakes.** The District must not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in an Offer after Opening but before Award of the Contract, the District may take the following action:

- (a)** The District may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:
  - (A)** Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
  - (B)** Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and
  - (C)** Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms, or the Addendum involved did not affect price, quality, or delivery.
- (b)** The District may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the District's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Unit prices shall prevail over extended prices in the event of a discrepancy between extended prices and unit prices.
- (c)** The District may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:
  - (A)** The nature of the error;
  - (B)** That the error is not a minor informality under this Section or an error in judgment;
  - (C)** That the error cannot be corrected or waived under Section (2)(b) of this Rule;
  - (D)** That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
  - (E)** That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (F) That the Offeror will suffer substantial detriment if the District does not grant the Offeror permission to withdraw the Offer;
  - (G) That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and
  - (H) That the Offeror promptly gave Notice of the claimed error to the District.
- (d) The criteria in Section (2)(c) of this Rule must determine whether the District will permit an Offeror to withdraw its Offer after Closing. These criteria also must apply to the question of whether the District will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the District based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually Awarded by the District, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.
- (3) **Rejection for Mistakes.** The District will reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.
- (4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this Division 49 only to the extent permitted by applicable law.

**NCSD-49-0360 First-Tier Subcontractors; Disclosure and Substitution; ITB**

- (1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the District to exceed \$100,000, all Bidders must submit to the District a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:
- (a) 5% of the total Contract Price, but at least \$15,000; or
  - (b) \$350,000, regardless of the percentage of the total Contract Price.
- (2) **Bid Closing, Disclosure Deadline, and Bid Opening.** For each ITB to which this Rule applies, the District must:
- (a) Set the Bid Closing on a Tuesday, Wednesday, or Thursday, and at a time between 2:00 p.m. and 5:00 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges, or other transportation facilities, and provided that the two-hour disclosure deadline described by this Rule would not then fall on a legal holiday;
  - (b) Open Bids publicly immediately after the Bid Closing; and
  - (c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the District.
- (3) **Bidder Instructions and Disclosure Form.** For the purposes of this Rule, the District in its solicitation must:
- (a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and
  - (b) Provide instructions in a Notice substantially similar to the following:  
"Instructions for First-Tier Subcontractor Disclosure:

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

Bidders are required to disclose information about certain first-tier subcontractors (see ORS 279C.370). Specifically, when the Contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the Project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

- (A) The subcontractor's name,
- (B) The category of Work that the subcontractor would be performing, and
- (C) The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE DISTRICT MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see NCSD-49-0360)."

- (4) **Submission.** A Bidder must submit the disclosure form required by this Rule either in its Bid submission or within two working hours after Bid Closing in the manner specified by the ITB.
- (5) **Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279C.370 and this Rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and will not be considered for Contract Award.
- (6) **District Role.** The District must obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this Rule. The District must also provide copies of disclosure forms to BOLI as required by ORS 279C.835. The District is not required to determine the accuracy or completeness of the information provided on disclosure forms.
- (7) **Substitution.** Pursuant to ORS 279C.585, a Contractor whose Bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 and this Rule by submitting the name of the new subcontractor and the reason for the substitution in Writing to the District. A Contractor may substitute a first-tier subcontractor under this Section in the following circumstances:
  - (a) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a Written Contract after having had a reasonable opportunity to do so after the Written Contract, which must be reasonably based on the general terms, conditions, plans, and Specifications for the Public Improvement Project or the terms of the subcontractor's Written Bid, is presented to the subcontractor by the Contractor.
  - (b) When the disclosed subcontractor becomes bankrupt or insolvent.
  - (c) When the disclosed subcontractor fails or refuses to perform the subcontract.
  - (d) When the disclosed subcontractor fails or refuses to meet the bond requirements of the Contractor that had been identified prior to the Bid submittal.
  - (e) When the Contractor demonstrates to the District that the subcontractor was disclosed as the result of an inadvertent clerical error.

## North Clackamas School District Public Contracting Rules

### Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (f) When the disclosed subcontractor does not hold a license from, or has a license that is not properly endorsed by, the Construction Contractors Board and is required to be licensed by the Construction Contractors Board.
- (g) When the Contractor determines that the Work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and Specifications or that the subcontractor is substantially delaying or disrupting the progress of the Work.
- (h) When the disclosed subcontractor is ineligible to work on a Public Improvement Contract under applicable statutory provisions.
- (i) When the substitution is for good cause. The Construction Contractors Board shall define "good cause" by rule. "good cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for Public Improvement Contracts established in ORS 279C.305.
- (j) When the substitution is reasonably based on the Contract alternates chosen by the District.

The District must accept Written submissions filed under this Section (7) as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, the District does not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

#### **NCSD-49-0370 Disqualification of Persons**

- (1) **Authority.** The District may disqualify a Person from consideration of Award of the District's Contracts after providing the Person with Notice and a reasonable opportunity to be heard in accordance with Sections (2) and (4) of this Rule.
- (a) **Standards for Conduct Disqualification.** As provided in ORS 279C.440, the District may disqualify a Person for:
    - (A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private Contract or subcontract or in the performance of such Contract or subcontract.
    - (B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the Person's responsibility as a Contractor.
    - (C) Conviction under state or federal antitrust statutes.
    - (D) Violation of a Contract provision that is regarded by the District to be so serious as to justify disqualification. A violation under this Section (1)(a)(D) may include, but is not limited to, material failure to perform the terms of a Contract or an unsatisfactory performance in accordance with the terms of the Contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for disqualification.
    - (E) Failure to carry workers' compensation or unemployment insurance as required by statute.
  - (b) **Standards for DBE Disqualification.** As provided in ORS 200.065, 200.075, or 279A.110, the District may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g., subcontractors) as follows:

## North Clackamas School District Public Contracting Rules

### Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (A) For a DBE Disqualification under ORS 200.065, the District may disqualify a Person upon finding that:
- (i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority-owned, women-owned, veteran-owned, or emerging small business enterprise; or
  - (ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or
  - (iii) The Person has been disqualified by another district pursuant to ORS 200.065.
- (B) For a DBE Disqualification under ORS 200.075, the District may disqualify a Person upon finding that:
- (i) The Person has entered into an agreement representing that a disadvantaged, minority, women or emerging small business enterprise, certified pursuant to ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or
  - (ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or
  - (iii) The Person uses a Certified Enterprise to perform Services under a Contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the Contract.
  - (iv) If a Person is disqualified for a DBE Disqualification under ORS 200.075, the affected District must not permit such Person to participate in that District's Contracts.
- (C) For a DBE Disqualification under ORS 279A.110, the District may disqualify a Person if the District finds that the Person discriminated against minority-owned, women-owned, veteran-owned, or emerging small business enterprises in Awarding a subcontract under a Contract with that District.
- (2) **Notice of Intent to Disqualify.** The District must notify the Person in Writing of a proposed disqualification personally or by registered or certified mail, return receipt requested. This Notice must:
- (a) State that the District intends to disqualify the Person;
  - (b) Set forth the reasons for the disqualification;
  - (c) Include a statement of the Person's right to a hearing if requested in Writing within a time period established by the District and that if the District does not receive the Person's Written request for a hearing within the time stated, the Person must have waived its right to a hearing;
  - (d) Include a statement of the authority and jurisdiction under which the hearing will be held;
  - (e) Include a reference to the particular Sections of the statutes and Rules involved;
  - (f) State the proposed disqualification period; and
  - (g) State that the Person may be represented by legal counsel.
- (3) **Hearing.** The Superintendent will schedule a hearing upon receipt of a timely request for hearing. The Superintendent will notify the Person of the time and place of the hearing and provide information on

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

hearing procedures. Following the hearing, the Superintendent will make a decision on whether to disqualify the Person.

**(4) Notice of Disqualification.** The District will notify the Person in Writing of its disqualification, personally or by registered or certified mail, return receipt requested. The Notice must contain:

- (a) The effective date and period of disqualification;
- (b) The grounds for disqualification; and
- (c) A statement of the Person's appeal rights and applicable appeal deadlines as provided in Section (5) of this Rule.

**(5) Appeal of Disqualification.**

- (a) Any Person who wishes to appeal a decision by the Superintendent to disqualify the Person under this Section shall, within three business Days after receipt of the Notice of Intent to Disqualify under Section (4) of this Rule, file Written Notice with the District that the Person appeals the decision. The District shall notify the Contract Review Board and schedule the appeal hearing before the Contract Review Board.
- (b) Immediately upon receipt of the prospective Bidder's or Proposer's Notice of appeal, the District shall notify the appropriate Local Contract Review Board.
- (c) Upon the receipt of Notice from the District under Section (2) of this Rule, the Contract Review Board shall promptly notify the Person appealing and the District of the time and place of the hearing. The Contract Review Board shall conduct the hearing and decide the appeal within 30 Days after receiving the Notice from the District. The Contract Review Board shall set forth in Writing the reasons for the hearing decision.
- (d) At the hearing the Contract Review Board shall consider de novo the Notice of disqualification, the reasons for disqualification set forth in Section (1) of this Rule on which the District based the disqualification, and any evidence provided by the parties. Hearings before a Contract Review Board shall be conducted under rules of procedure adopted by the Contract Review Board.
- (e) The Contract Review Board may allocate the Contract Review Board's costs for the hearing between the Person appealing and the District. The allocation shall be based on facts found by the Contract Review Board and stated in the final order that, in the Contract Review Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:
  - (A) If the decision to disqualify the Person is upheld, the costs shall be paid by the Person appealing the decision.
  - (B) If the decision to disqualify a Person is reversed, the costs shall be paid by the District.
- (f) Judicial review of any decision by the Contract Review Board shall be as set forth in ORS 279C.450.

**NCSD-49-0380 Bid or Proposal Evaluation Criteria**

**(1) General.** A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See NCSD-49-0390 and Rules for Alternative Contracting Methods at NCSD-49-0600 to NCSD-49-0690.

**(2) Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers, or a combination of the two.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (a) **Lump Sum.** If the ITB requires a lump-sum Bid without additive or deductive alternates, or if the District elects not to Award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base-Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the District for the purpose of comparing Bids.
- (b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the District for the purpose of comparing Bids. The District must specify within the Solicitation Document the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price governs. See NCSO-49-0350(2)(b).

**(3) Proposal Evaluation Criteria.** If the Board has exempted the Procurement of a Public Improvement from the Competitive Bidding requirements of ORS 279C.335(1) and has directed the District to use an Alternative Contracting Method under ORS 279C.335(4), the District shall set forth the evaluation criteria in the Solicitation Documents. See NCSO-49-0640, NCSO-49-0650, NCSO-49-0670, NCSO-049-0690, ORS 279C.335, and ORS 279C.405.

**NCSO-49-0390 Offer Evaluation and Award; Determination of Responsibility**

**(1) General.** If Awarded, the District must Award the Contract to the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (See ORS 279C.375(3)(a)) or is ineligible for Award as a nonresident education service district (ORS 279C.325). The District may Award by item, groups of items, or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on Competitive Bids, ORS 279C.375(5) permits multiple Contract Awards when specified in the ITB.

**(2) Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the District must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the District must determine that the Offeror:

- (a) Has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all Contractual responsibilities.
- (b) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the Work specified in the Contract.
- (c) Is covered by liability insurance and other insurance in amounts the District requires in the Solicitation Documents.
- (d) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407, or has elected coverage under ORS 656.128.
- (e) Has made the disclosure required under ORS 279C.370.
- (f) Has completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the Bidder's control, the Bidder stayed within the time and budget allotted for the procurement,

## North Clackamas School District Public Contracting Rules

### Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

and otherwise performed the contract in a satisfactory manner. The District may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The District shall document the Bidder's record of performance in the Procurement File if the District finds under this subparagraph that the Bidder is not responsible.

- (g) Has a satisfactory record of integrity. In evaluating the Bidder's record of integrity, the District may consider, among other things, whether the Bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Bidder's performance of a contract or subcontract. The District shall document the Bidder's record of integrity in the Procurement File if the District finds under this subparagraph that the Bidder is not responsible.
- (h) Is legally qualified to contract with the District.
- (i) Supplied all necessary information in connection with the inquiry concerning responsibility. If a Bidder fails to promptly supply information concerning responsibility that the District requests, the District shall determine the Bidder's responsibility based on available information, or may find that the Bidder is not responsible.

**(3) Documenting Agency Determinations.** The District must document its compliance with ORS 279C.375(3) and the above Sections of this Rule on a Responsibility Determination Form substantially as set forth in 279.375(3)(c), and file that form with the Construction Contractors Board within 30 Days after Contract Award.

**(4) District Evaluation.** The District must evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The District must not evaluate an Offer using any other requirement or criterion.

**(5) Offeror Submissions.**

- (a) The District may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material, and may also require any of the following prior to Award:
  - (A) Demonstration, inspection, or testing of a product for characteristics such as compatibility, quality, or workmanship;
  - (B) Examination of such elements as appearance or finish; or
  - (C) Other examinations to determine whether the product conforms to Specifications.
- (b) The District must evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The District must reject an Offer providing any product that does not meet the Solicitation Document requirements. The District's rejection of an Offer because it offers nonconforming Work or materials is not disqualification and is not appealable under ORS 279C.445.

**(6) Evaluation of Bids.** The District must use only objective criteria to evaluate Bids as set forth in the ITB. The District must evaluate Bids to determine which Responsible Offeror Offers the lowest Responsive Bid.

- (a) Nonresident Bidders. In determining the lowest Responsive Bid, the District must add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
- (b) Clarifications. In evaluating Bids, the District may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification must not vary, contradict, or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications must become part of the Bidder's Bid.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

(c) **Negotiation Prohibited.** The District must not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) **Evaluation of Proposals.** See NCSD-49-0650 regarding Rules applicable to Requests for Proposals.

**NCSD-49-0395 Notice of Intent to Award**

(1) **Notice.** At least seven Days before the Award of a Public Improvement Contract, the District shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to 279C.410(7)), or post electronically or otherwise, a Notice of the District's Intent to Award the Contract. This requirement does not apply to Award of a Small (under \$25,000) or Intermediate (informal Competitive Quotes) Public Improvement Contract Awarded under ORS 279C.335(1)(c) or (d).

(2) **Form and Manner of Posting.** The form and manner of posting Notice shall conform to customary practices within the District's Procurement system, and may be made electronically.

(3) **Finalizing Award.** The District's Award shall not be final until the later of the following:

(a) Seven Days after the date of the Notice, unless the Solicitation Document provided a different period for protest; or

(b) The District provides a Written response to all timely filed protests that denies each protest and affirms the Award.

(4) **Prior Notice Impractical.** Posting of Notice of Intent to Award shall not be required when the District determines that it is impractical due to unusual time constraints in making prompt Award for its immediate Procurement needs, documents the Procurement File as to the reasons for that determination, and posts Notice of that action as soon as reasonably practical.

**NCSD-49-0400 Documentation of Award; Availability of Award Decisions**

(1) **Basis of Award.** After Award, the District must make a record showing the basis for determining the successful Offeror part of the District's Procurement File.

(2) **Contents of Award Record for Bids.** The District's record must include:

(a) Bids.

(b) Completed Bid tabulation sheet; and

(c) Written justification for any rejection of lower Bids.

(3) **Contents of Award Record for Proposals.** Where the use of Requests for Proposals is authorized as set forth in NCSD-49-0650, the District's record must include:

(a) Proposals.

(b) The completed evaluation of the Proposals;

(c) Written justification for any rejection of higher-scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and

(d) If the District permitted negotiations in accordance with NCSD-49-0650, the District's completed evaluation of the initial Proposals and the District's completed evaluation of final Proposals.

(4) **Contract Document.** The District must deliver a fully executed copy of the final Contract to the successful Offeror.

(5) **Bid Tabulations and Award Summaries.** Upon request of any Person, the District must provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. The District may also provide tabulations of Bids and Proposals Awarded on designated Web sites.

**(6) Availability of Procurement Files.** The District must make completed Procurement Files available for public review at the District.

**(7) Copies from Procurement Files.** Any Person may obtain copies of material from Procurement Files upon payment of a reasonable copying charge.

**NCSD-49-0410 Time for District Acceptance; Extension**

**(1) Time for Offer Acceptance.** An Offeror's Bid, or Proposal submitted as a Firm Offer (see NCSD-49-0280), is irrevocable, valid, and binding on the Offeror for not less than 60 Days from Closing unless otherwise specified in the Solicitation Document.

**(2) Extension of Acceptance Time.** The District may request, orally or in Writing, that Offerors extend, in Writing, the time during which the District may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer must continue as a Firm Offer, irrevocable, valid, and binding on the Offeror for the agreed-upon extension period.

**NCSD-49-0420 Negotiation With Bidders Prohibited**

**(1) Bids.** Except as permitted by ORS 279C.340 and NCSD-49-0430 when all Bids exceed the Cost Estimate, the District must not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the District and the Contractor may only modify the Contract by Change Order or Amendment to the Contract in accordance with NCSD-49-0860.

**(2) Requests for Proposals.** The District may only conduct discussions or negotiations with Proposers in accordance with the requirements of NCSD-49-0650.

**NCSD-49-0430 Negotiation When Bids Exceed Cost Estimate**

**(1) Generally.** In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the District's Cost Estimate, prior to Contract Award the District may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest Responsive Bid in an attempt to bring the Project within the District's Cost Estimate. The subcontractor disclosure and substitution requirements of NCSD-49-0360 do not apply to negotiations under this Rule.

**(2) Definitions.** The following definitions apply to this Rule:

- (a) "Cost Estimate"** means the District's most recent pre-Bid, good-faith assessment of anticipated Contract costs, consisting either of an estimate of an Architect, Engineer, or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.
- (b) "Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in NCSD-49-0650, but excluding any material requirements previously announced in the solicitation process that would likely affect the field of competition.
- (c) "Project"** means a Public Improvement.
- (d) "Value Engineering"** means the identification of alternative methods, materials, or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements that may be made, consistent with industry practice, under the Original Contract by mutual agreement in order to take

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from Life-Cycle Costing, which may either increase or decrease absolute costs over varying time periods.

- (3) **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the District, must be excluded from consideration.
- (4) **Scope of Negotiations.** The District must not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the District to participate in the Bidding process had the change been made during the solicitation process rather than during negotiation. This Rule must not be construed to prohibit solicitation of trade subcontracts.
- (5) **Discontinuing Negotiations.** The District may discontinue negotiations at any time, and must do so if it appears to the District that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to re-Bid any portion of the Project, or to obtain subcontractor pricing information upon request, must be considered a lack of good faith.
- (6) **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.
- (7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been Awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 through 192.505.

**NCSD-49-0440 Rejection of Offers**

- (1) **Rejection of an Offer.**
- (a) The District may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.
- (b) The District will reject an Offer upon the District's finding that the Offer:
- (A) Is contingent upon the District's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document, or
- (B) Takes exception to terms and conditions (including Specifications), or
- (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law; or
- (D) Offers Work that fails to meet the Specifications of the Solicitation Document; or
- (E) Is late; or
- (F) Is not in substantial compliance with the Solicitation Document; or
- (G) Is not in substantial compliance with all prescribed public solicitation procedures.
- (c) The District will reject an Offer upon the District's finding that the Offeror:
- (A) Has not been prequalified under ORS 279C.430 and the District required mandatory prequalification; or
- (B) Has been disqualified; or

## North Clackamas School District Public Contracting Rules

### Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (C) Has been declared ineligible under ORS 279C.860 by the Commissioner of BOLI and the Contract is for a Public Work; or
- (D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement; or
- (E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document; or
- (F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document; or
- (G) Has failed to provide the certification required under Section (3) of this Rule; or
- (H) Is not Responsible. See NCSD-49-0390(2) regarding District determination that the Offeror has met statutory standards of responsibility.

(2) **Form of Business.** For purposes of this Rule, the District may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Rule or to apply the disqualification provisions of ORS 279C.440 through 279C.450 and NCSD-49-0370.

(3) **Certification of Non-Discrimination.** The Offeror must certify and deliver to the District Written certification, as part of the Offer, that the Offeror has not discriminated against minority-owned, women-owned, veteran-owned, or emerging small business enterprises in obtaining any required subcontracts. Failure to do so must be grounds for disqualification.

(4) **Rejection of all Offers.** The District may reject all Offers for good cause upon the District's Written Finding that it is in the public interest to do so. The District must notify all Offerors of the rejection of all Offers, along with the good-cause justification and Finding.

(5) **Criteria for Rejection of All Offers.** The District may reject all Offers upon a Written Finding that:

- (a) The content of or an error in the Solicitation Document or the solicitation process unnecessarily restricted competition for the Contract;
- (b) The price, quality, or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the Competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the Competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
- (e) The District cancels the solicitation in accordance with NCSD-49-0270; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

### NCSD-49-0450 Protest of Contractor Selection, Contract Award

(1) **Purpose.** An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the District's Contractor selection or Contract Award decision.

(2) **Notice of Competitive Range.** Unless otherwise provided in the RFP, when the Competitive Proposal process is authorized under NCSD-49-0650, the District must provide Written Notice to all

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

Proposers of the District's determination of the Proposers included in the Competitive Range. The District's Notice of the Proposers included in the Competitive Range must not be final until the later of the following:

- (a) Seven Days after the date of the Notice, unless otherwise provided therein; or
  - (b) Until the District provides a Written response to all timely filed protests that denies the protest and affirms the Notice of the Proposers included in the Competitive Range.
- (3) **Notice of Intent to Award.** Unless otherwise provided in the Solicitation Document, the District must provide Written Notice to all Offerors of the District's Intent to Award the Contract as provided in NCSD-49-0395.
- (4) **Right to Protest Award.**
- (a) An adversely affected or aggrieved Offeror may submit to the District a Written protest of the District's Intent to Award within seven Days after issuance of the Notice of Intent to Award the Contract, unless a different protest period is provided under the Solicitation Document.
  - (b) The Offeror's protest must be in Writing and must specify the grounds on which the protest is based.
  - (c) An Offeror is adversely affected or aggrieved only if the Offeror 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 Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:
    - (A) Because their Offers were Non-Responsive; 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 Offeror 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.
  - (d) The District will not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the District's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.
- (5) **Right to Protest Competitive Range.**
- (a) An adversely affected or aggrieved Proposer may submit to the District a Written protest of the District's decision to exclude the Proposer from the Competitive Range within seven Days after issuance of the Notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at NCSD-49-0650.)
  - (b) The Proposer's protest must be in Writing and must specify the grounds on which the protest is based.
  - (c) A Proposer is adversely affected only if the Proposer 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

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (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.
- (d) The District must not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest the District's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.
- (6) **Authority to Resolve Protests.** The Superintendent may settle or resolve a Written protest submitted in accordance with the requirements of this Rule.
- (7) **Decision.** If a protest is not settled, the Superintendent, or such Person's designee, must promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.
- (8) **Award.** The successful Offeror must promptly execute the Contract after the Award is final. The District must execute the Contract only after it has obtained all applicable required documents and approvals.

**NCSD-49-0460 Performance and Payment Security; Waiver**

- (1) **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a) or this Rule, excused in cases of emergency under ORS 279C.380(4), or unless the District exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor must execute and deliver to the District a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts.
- (2) **Other Construction Contracts.** The District may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements must be expressly set forth in the Solicitation Document.
- (3) **Requirement for Surety Bond.** The District must accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the District may accept a cashier's check or certified check in lieu of all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.
- (4) **Time for Submission.** The apparent successful Offeror must promptly furnish the required performance security at the District's request. If the Offeror fails to furnish the security as requested, the District may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the District's discretion, the Offeror must forfeit its Bid or Proposal security.
- (5) **Public Improvement Contracts Under \$100,000.** The Superintendent may, in his or her discretion, waive the Bid security requirements and performance and payment bond requirements of ORS 279C.380 if the amount of the Contract for the Public Improvement is \$100,000 or less.

**NCSD-49-0470 Substitute Contractor**

If the Contractor provided a performance bond, the District may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor must perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and must not be subject to the Competitive Procurement provisions of ORS 279C.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**NCSD-49-0490 Foreign Contractor**

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor must promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration, and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report must be forwarded to the District. The District Awarding the Contract must satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

**ALTERNATIVE CONTRACTING METHODS**

**NCSD-49-0600 Alternative Contracting Methods; Purpose**

These NCSD-49-0600 to NCSD-49-0690 Rules are intended to provide guidance to the District regarding the use of Alternative Contracting Methods for Public Improvement Contracts. These Alternative Contracting Methods include, but are not limited to, the following forms of contracting: Design-Build, Energy Savings Performance, and the Construction Manager/General Contractor Method. To the extent any such Alternative Contracting Methods are utilized within the competitive bidding process set forth in ORS 279C.335(1), these OAR 137-049-0600 to 137-049-0690 rules are advisory only and may be used or referred to by the District in whole, in part or not at all, within the discretion of the District. As to ESPC contracting, these NCSD-49-0600 through NCSD-49-0690 Rules implement the requirements of ORS 279C.335 pertaining to the adoption of Model Rules appropriate for use by the entire District to govern the procedures for entering into ESPCs. As to contracting for Construction Manager General Contractor Services, NCSD 49-0600 to 49-0690 include mandatory and optional provisions pertaining to the procurement of Construction Manager/General Contractor Services, pursuant to the requirements of ORS 279C.337.

**NCSD-49-0610 Definitions for Alternative Contracting Methods**

The following definitions must apply to Rules NCSD-49-0600 to NCSD-49-0690, unless the context requires otherwise:

- (1) **"Affiliate"** has the meaning set forth in ORS 279C.332(1).
- (2) **"Alternative Contracting Methods"** mean innovative techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional methods involved in the design-bid-build construction contracting method (with Award of a Public Improvement Contract based solely on price, in which a final design is issued with formal Bid Documents, construction services are obtained by sealed Bid awarded to the Responsible Bidder submitting the lowest Responsive Bid, and the project is built in accordance with those Documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting, and ESPCs, which are specifically addressed in these NCSD-49-0600 to NCSD-49-0690 Rules. These methods also include other developing techniques which include but are not limited to general "performance contracting," "cost-plus-time " contracting, (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements for these methods are identified in these NCSD-49-0600 to NCSD-49-0690 rules when the District uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).
- (3) **"Construction Manager/General Contractor" (or "CM/GC")** has the meaning set forth in ORS 279C.332(2).
- (4) **"Construction Manager/General Contractor Method" (or "CM/GC Method")** means the Alternative Contracting Method which involves a District's selection of a CM/GC to perform CM/GC Services for a project or projects.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (5) **"Construction Manager/General Contractor Services"** (or **"CM/GC Services"**) has the meaning set forth in ORS 279C.332(3).
- (6) **"Design-Build"** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the Project team with the District, and manages both design and construction. In this form of Contract, a single Person provides the District with all of the Personal Services and construction Work necessary to both design and construct the Project.
- (7) **"Early Work"** means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.
- (8) **"Energy Conservation Measures"** ("ECMs") (also known as **"Energy Efficiency Measures"**) means, as used in ESPC Procurement, any equipment, fixture, or furnishing to be added to or used in an existing building or structure, and any repair, alteration, or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future Contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these NCS-49-0600 to NCS-49-0690 Rules, use of either or both of the terms "building" or "structure" must be deemed to include existing energy, water, and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the Project, either as part of the Project together with the building or structure, or when such system(s) are the focus of the Project. Maintenance services are not Energy Conservation Measures for purposes of these NCS-49-0600 to NCS-49-0690 Rules.
- (9) **"Energy Savings Guarantee"** means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the District that certain energy savings and performance will be achieved for the Project covered by the RFP through the installation and implementation of the agreed-upon ECMs for the Project. The Energy Savings Guarantee must include, but must not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the District in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the District after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.
- (10) **"Energy Savings Performance Contract"** ("ESPC") means a Public Improvement Contract between the District and a Qualified Energy Service Company for the identification, evaluation, recommendation, design, and construction of Energy Conservation Measures, including a Design-Build Contract, that guarantee energy savings or performance.
- (11) **"General Conditions Work"** ("GC Work") means a general grouping of project Work required to support construction operations on the project that is not separately invoiced or subcontracted by the Contractor or included within the Contractor's overhead or fee.
- (12) **"Guaranteed Maximum Price"** ("GMP") has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, "Guaranteed Maximum Price" or "GMP" means the total maximum price provided to the District by the Contractor, and accepted by the District, that includes all reimbursable costs of and fees for completion of the Contract Work, and any particularly identified contingency amounts as defined by the Public Improvement Contract.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**(13) "Measurement and Verification" ("M & V")** means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

**(14) "Project Development Plan"** means a secondary phase of Services performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the Project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's services during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work. The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

**(15) "Qualified Energy Service Company" ("ESCO")** means, as used in ESPC Procurement, a company, firm, or other legal Person with the following characteristics: demonstrated technical, operational, financial, and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the Project under consideration by the District; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the Project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that Project.

**(16) "Savings"** has the meaning set forth in ORS 279C.337(4), pertaining to CM/GC Services procurements. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual cost of the Contractor's performance of the Contract Work payable by the District under the terms of the Contract, including costs for which the District reimburses a Contractor and fees, profits or other payments the Contractor earns.

**(17) "Technical Energy Audit,"** as used in ESPC Procurement means the initial phase of Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the District of the ESCO's Findings during this initial phase of the Work. The term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

**NCSD-49-0620 Use of Alternative Contracting Methods**

**(1) Competitive Bidding Exemptions.** ORS 279C requires a Competitive Bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process in accordance with ORS 279C.335 and any applicable District Rules. Use of Alternative Contracting Methods may be directed by the District if that use is within the competitive bidding process if feasible, or through an available statutory exception to the competitive bidding process. Use of Alternative Contracting Methods must be directed through the District's Local Contract Review Board, however, when use of the Alternative Contracting Method requires an exemption to the prescribed competitive bidding requirement of ORS 279C.335. In any of these circumstances, "use of Alternative Contracting Methods must be justified in accordance with any applicable Code and District requirements and, if require, these NCSD 049-0600 to NCSD-049-0690 Rules. See NCSD-49-0630 regarding required Findings and restrictions on exemptions from the competitive bidding requirements under ORS 279C.335.

**(2) Energy Savings Performance Contracts.** ESPCs are excepted from the Competitive Bidding requirements for Public Improvement Contracts pursuant to ORS 279C.335(1)(f) if the District complies

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

with the procedures set forth in these NCSD-49-0600 through NCSD-49-0690 or parallel administrative rules meeting the requirements of ORS 279A.065 related to the solicitation, Rules related to the solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within ORS 279C.335.

**(3) Post-Project Evaluation.** ORS 279C.355 requires that the District prepare a formal post-Project evaluation of Public Improvement Projects in excess of \$100,000 when the District does not use the competitive bidding process required by ORS 279C.335. The purpose of this evaluation is to determine whether it was actually in the District's best interest to use an Alternative Contracting Method outside the competitive bidding process. The evaluation must be delivered to the Contract Review Board of the District as applicable within 30 Days of the date the District "accepts" the Public Improvement Project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Contract Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

- (a) Financial information, consisting of Cost Estimates, any GMP changes, and actual costs;
- (b) A narrative description of successes and failures during design, engineering, and construction; and
- (c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

**NCSD-49-0630 Findings, Notice, and Hearing**

**(1) Cost Savings and Other Substantial Benefits Factors.** When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from the Competitive Bidding requirements, the "substantial cost savings" criterion and "other substantial benefits" criteria at ORS 279C.335(2)(b) require consideration of the type, cost, and, to the extent applicable, the other factors set forth in the statute. If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the District Local Contract Review Board does not need to consider that factor, and the District is not required to address the factor, other than to explain why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts.

**(2) Required Information.** The statutory definition of "Findings" at ORS 279C.330 which applies to exemptions from competitive bidding means the justification for the District's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and 279C.335(2)(b) or, in the alternative, both 279C.335(2)(a) and 279C.335(2)(c).

**(3) Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

- (a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and
- (b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355, and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings must relate back to the specific characteristics of the Project or Projects at issue in the exemption request; and

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, the District may make a Finding that identifies the Project as a "pilot Project" under ORS 279C.335(2)(c). Nevertheless, the District must still make the findings required in ORS 279C.335(2)(a).

**(4) Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that the exemption "is likely to encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public Notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award will be made based on identified selection criteria, and an opportunity will be given to protest that Award.

**(5) Descriptions.** Findings supporting a competitive bidding exemption must describe with specificity any Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one-step (Request for Proposals), two-step (beginning with a Request for Qualification, followed by a Request for Proposals) or other solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the District. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

**(6) Class Exemptions.** In making the Findings supporting a class exemption, the District must clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279C.335(3). The class must meet the following requirements:

- (a) The class cannot be based on a single characteristic or factor, so that an Agency directly or indirectly creates a class whereby the Agency uses, for example, the CM/GC Method for all Agency construction projects or all Agency construction projects over a particular dollar amount, unidentified future Agency construction projects of a particular work category, or all Agency construction projects from a particular funding source such as the sale of bonds; and
- (b) The class must include a combination of factors, be defined by the Agency through characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2) and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the Agency's objectives while allowing for impartial and open competition, and protecting the integrity of the exemption process. An example of a class that might be permitted under the statute is a series of projects, such as a specific group of building renovation projects, that:
  - (i) involve renovations for a common purpose;
  - (ii) require completion on a related schedule in order to avoid unnecessary disruption of District operations;
  - (iii) share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of agency staff during construction;
  - (iv) otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and
  - (v) otherwise meet the requirements of the Director of the District Local Contract Review Board.

**(7) Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract from the requirement of Competitive Bidding, the District shall provide public notice of the proposed exemption under ORS 279C.335(2), as required by ORS 279C.335(5). 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. If the District does not receive a

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

written request from an interested party to hold a public hearing, the District may hold a public hearing, but is not required to hold a public hearing. The public hearing, if held, shall be for the purpose of receiving public comment on the District's draft Findings.

**NCSD-49-0640 Competitive Proposals; Procedure**

The District may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to 279C.337, ORS 279C.400 through 279C.410 and NCSD-49-0600 through NCSD-49-0690, unless other applicable statutes control the District's use of Competitive Proposals for Public Improvement Contracts. Also see the Section of Rules in this Division entitled Formal Procurement Rules, NCSD-49-0200 through NCSD-49-0450, and RFP-related Rules under the Alternative Contracting Methods Section at NCSD-49-0640 through NCSD-49-0660. For ESPCs, the following RFP process as further specified in NCSD-49-0645, NCSD-049-0650, NCSD-049-0660 and NCSD-049-0680 shall be utilized if the District desires the Procurement process to be exempt from the Competitive Bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in NCSD-49-0600 through NCSD-49-0690 includes the following steps:

**(1) Proposal Evaluation.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation must be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors must:

- (a) Be reasonable estimates based on information available to the District;
- (b) Treat all Proposals equitably; and
- (c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the District. See ORS 279C.305.

For ESPC Proposal evaluations, the District may provide in the RFP that qualifications-based evaluation factors will outweigh the District's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. For CM/GC Services Proposal evaluations, the District must comply with ORS 279C.337.

**(2) Evaluation Factors.**

- (a) In basic negotiated construction contracting where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that could affect the cost or quality of the Work.
- (b) In CM/GC contracting, in addition to Section (2)(a) above, those factors may also include the ability to respond to the technical complexity or unique character of the Project, analyze and propose solutions or approaches to complex Project problems, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.
- (c) In Design-Build contracting, in addition to Sections (2)(a) and (2)(b) above, those factors may also include design professional qualifications, specialized experience, preliminary design

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

submittals, technical merit, design-builder team experience, and related matters that affect cost or quality.

- (d) In ESPC contracting, in addition to the factors set forth in Sections (2)(a)-(c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the Project, information on the specific methods, techniques, and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the Project, the ESCO's experience in the energy savings performance contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a subcontractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular Project between the District and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's Project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work, and the ESCO's fee structure for all phases of the ESPC Project.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and NCSD-49-0600 through NCSD-49-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See NCSD-49-0650. Terms that may be negotiated consist of details of Contract performance; methods of construction, timing, and assignment of risk in specified areas; fee; and other matters that could affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the District has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of Services to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO, and scope of Work, methodologies, and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of NCSD-49-0680.

**NCSD-49-0645 Requests for Qualifications ("RFQ")**

As provided by ORS 279C.405(1), the District may utilize RFQs to obtain information useful in the preparation or distribution of an RFP. When using RFQs as the first step in a two-step solicitation process in which distribution of the RFPs will be limited to the firms identified as most qualified through their submitted statements of qualification, the District must first advertise and provide Notice of the RFQ in the same manner in which RFPs are advertised, specifically stating that RFPs will be distributed only to the firms selected in the RFQ process. In such cases, the District must also provide within the RFQ a protest provision substantially in the form of NCSD-49-0450(5) regarding protests of the Competitive Range.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

Thereafter, the District may distribute RFPs to the selected firms without further advertisement of the solicitation.

**NCSD-49-0650 Requests for Proposals ("RFP")**

**(1) Generally.** The use of Competitive Proposals must be specially authorized for a Public Improvement Contract under the Competitive Bidding exception and exemption requirements of ORS 279C.335, NCSD-49-0130, and NCSD-49-0600 through NCSD-49-0690. Also see ORS 279C.337 and ORS 279C.400 to 279C.410 for statutory requirements regarding Competitive Proposals, and NCSD-49-0640 regarding Competitive Proposal procedures.

**(2) Solicitation Documents.** In addition to the Solicitation Document requirements of NCSD-49-0200, this Rule applies to the requirements for RFPs. RFP Solicitation Documents must conform to the following standards:

- (a)** The District must set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references, and warranty provisions. See NCSD-49-0640 regarding proposal evaluation and evaluation factors. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates based on information available to the District. Subject to ORS 279(C).410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to Award or prior to establishing any Competitive Range;
- (b)** When the District is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the District must identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the District has identified as authorized for negotiation. The District shall describe the evaluation, discussion, and negotiation process, including how the District will establish the Competitive Range, if any;
- (c)** The anticipated size of any Competitive Range must be stated in the Solicitation Document but may be decreased if the number of Proposers that submit Responsive Proposals is less than the specified number, or may be decreased as provided in NCSD-49-0650(4)(a).
- (d)** When the District intends to Award Contracts to more than one Proposer, the District shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The District must also include the criteria it will use to determine how the District will endeavor to achieve optimal value, utility, and substantial fairness when selecting a particular Contractor to provide Goods and Services from those Contractors Awarded Contracts.

**(3) Evaluation of Proposals.**

- (a) Evaluation.** The District must evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The District must evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.
  - (A) Clarifications.** In evaluating Proposals, the District may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications must become part of the Proposer's Proposal.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**(B) Limited Negotiation.** If the District did not permit negotiation in its Request for Proposals, the District may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

- (i)** Statement of Work; and
- (ii)** Contract Price as it is affected by negotiating the statement of Work.

The process for discussions or negotiations that is outlined and explained in Sections (5)(b) and (6) of this Rule does not apply to this limited negotiation.

**(b) Discussions; Negotiations.** If the District permitted discussions or negotiations in the Request for Proposals, the District must evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this Rule.

**(A)** If the Solicitation Document provided that discussions or negotiations may occur at the District's discretion, the District may forego discussions and negotiations and evaluate all Proposals in accordance with this Rule.

**(B)** If the District proceeds with discussions or negotiations, the District must establish a negotiation team tailored for the acquisition. The District's team may include legal, technical, auditing, and negotiating personnel.

**(c) Cancellation.** Nothing in this Rule must restrict or prohibit the District from canceling the solicitation at any time.

**(4) Competitive Range; Protest; Award.**

**(a) Determining Competitive Range.**

**(A)** If the District does not cancel the solicitation, after the Opening the District will evaluate all Proposals in accordance with the evaluation criteria set forth in the RFP. After evaluation of all Proposals in accordance with the criteria set forth in the RFP, the District will rank the Proposers based on the District's scoring and determine the Competitive Range.

**(B)** The District may increase the number of Proposers in the Competitive Range if the District's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive or have a reasonable chance of being determined the best Proposer after the District's evaluation of revised Proposals submitted in accordance with the process described in this Rule.

**(b) Protesting Competitive Range.** The District must provide Written Notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the District's evaluation and determination of the Competitive Range in accordance with NCSO-49-0450.

**(c) Intent to Award; Discuss or Negotiate.** After the protest period provided in accordance with these Rules expires, or after the District has provided a final response to any protest, whichever date is later, the District may either:

**(A)** Provide Written Notice to all Proposers in the Competitive Range of its Intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

- (i)** An unsuccessful Proposer may protest the District's Intent to Award in accordance with NCSO-49-0450.
- (ii)** After the protest period provided in accordance with NCSO-49-0450 expires, or after the District has provided a final response to any protest, whichever date is later, the

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

District must commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

- (B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals.** If the District chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the District must proceed as follows:

- (a) Initiating Discussions. The District must initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the District identified in the RFP as the subject of discussions. The District may conduct discussions for the following purposes:
  - (A) Informing Proposers of deficiencies in their initial Proposals;
  - (B) Notifying Proposers of parts of their Proposals for which the District would like additional information; and
  - (C) Otherwise allowing Proposers to develop revised Proposals that will allow the District to obtain the best Proposal based on the requirements and evaluation criteria set forth in the RFP.
- (b) Conducting Discussions. The District may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this Section, but need not conduct the same amount of discussions with each Proposer. The District may terminate discussions with any Proposer in the Competitive Range at any time. The District must, however, offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with the District before the District notifies Proposers of the date and time pursuant to this Section that revised Proposals will be due.
  - (A) In conducting discussions, the District:
    - (i) Must treat all Proposers fairly and must not favor any Proposer over another;
    - (ii) Must not discuss other Proposers' Proposals;
    - (iii) Must not suggest specific revisions that a Proposer should make to its Proposal, and must not otherwise direct the Proposer to make any specific revisions to its Proposal.
  - (B) At any time during the time allowed for discussions, the District may:
    - (i) Continue discussions with a particular Proposer;
    - (ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or
    - (iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide Notice to the Proposers in the Competitive Range to submit revised Proposals.
- (c) Revised Proposals. If the District does not cancel the solicitation at the conclusion of the District's discussions with all remaining Proposers in the Competitive Range, the District must give all remaining Proposers in the Competitive Range Notice of the date and time by which they must submit revised Proposals. This Notice constitutes the District's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the District's Notice.

## North Clackamas School District Public Contracting Rules

### Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (A) Upon receipt of the revised Proposals, the District shall evaluate the revised Proposals based on the evaluation criteria set forth in the RFP and rank the revised Proposals based on the District's scoring.
  - (B) The District may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the RFP.
  - (d) Intent to Award; Protest. The District must provide Written Notice to all Proposers in the Competitive Range of the District's Intent to Award the Contract. An unsuccessful Proposer may protest the District's Intent to Award in accordance with NCSD-49-0450. After the protest period provided in accordance with that Rule expires, or after the District has provided a final response to any protest, whichever date is later, the District must commence final Contract negotiations.
- (6) **Negotiation.**
- (a) Initiating Negotiations. The District may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:
    - (A) Initial determination of the Competitive Range; or
    - (B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.
  - (b) Conducting Negotiations
    - (A) Scope: The District may negotiate:
      - (i) The statement of Work;
      - (ii) The Contract Price as it is affected by negotiating the statement of Work; and
      - (iii) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP. Accordingly, Proposers must not submit, and the District must not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP.
    - (c) Continuing Negotiations. If the District terminates negotiations with a Proposer, the District may then commence negotiations with the next highest-scoring Proposer in the Competitive Range, and continue the process described in this Rule until the District has:
      - (A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or
      - (B) Completed one round of negotiations with all Proposers in the Competitive Range, unless the District provided for more than one round of discussions or negotiations in the Request for Proposals, in which case the District may proceed with any authorized further rounds of negotiations.
- (7) **Terminating Discussions or Negotiations.** At any time during discussions or negotiations conducted in accordance with this Rule, the District may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the District reasonably believes that:
- (a) The Proposer is not discussing or negotiating in good faith; or
  - (b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

**NCSD-49-0660 RFP Pricing Mechanisms**

- (1) An RFP may result in a Contract with a lump-sum Contract Price or a fixed Contract Price, as in the case of Competitive Bidding. Alternatively, a Request for Proposals may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.
- (2) Economic incentives or disincentives may be included to reflect stated District purposes related to time of completion, safety, or other Public Contracting objectives, including but not limited to total least-cost mechanisms such as Life-Cycle Costing.
- (3) A Guaranteed Maximum Price may be used as the pricing mechanism for CM/GC Services Contracts where a total Contract Price is provided in the design phase in order to assist the District in determining whether the Project scope is within the District's budget and allowing for design changes during preliminary design rather than after final design services have been completed.
  - (a) If the collaborative process described above in this section (3) is successful, the Contractor shall propose a final GMP, which may be accepted by the District and included within the Contract.
  - (b) If the collaborative process described above in this section (3) is not successful and no mutually agreeable resolution on the GMP for the project construction Work can be achieved with the Contractor, then the District must terminate the Contract. The District may then proceed to negotiate a new Contract (and GMP) with the Proposer that was next-ranked in the original selection process, or employ other means for continuing the Project under ORS 279C.
- (4) When Cost Reimbursement Contracts are utilized, regardless of whether a GMP is included, the District must provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable, and properly allocated.

**NCSD-49-0670 Design-Build Contracts**

- (1) **General.** The Design-Build form of contracting, as defined at NCSD-49-0610(3), has technical complexities that are not readily apparent. The District must use this contracting method only with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to use the Design-Build process, the District must be able to reasonably anticipate the following types of benefits:
  - (a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of responsibility;
  - (b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the Project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
  - (c) Reducing the risk of design flaws, misunderstandings, and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
  - (d) Shortening Project time as construction activity (early submittals, mobilization, subcontracting, and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased Projects); or
  - (e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.
- (2) **Authority.** The District must utilize the Design-Build form of contracting only in accordance with the requirements of these NCSD-49-0600 through NCSD-49-0690 Rules. See particularly NCSD-49-0620 pertaining to Alternative Contracting Methods and NCSD-49-0680 pertaining to ESPCs.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (3) **Selection.** Design-Build selection criteria may include those factors set forth above in NCSD-49-0640(2)(a), (b), and (c).
- (4) **QBS Inapplicable.** Because the value of construction services predominates the Design-Build form of Contracting, the qualifications-based selection ("QBS") process mandated by ORS 279C.110 for the District in certain circumstances in obtaining certain Consultant services is not applicable.
- (5) **Licensing.** If a Design-Build Contractor is not an Oregon-licensed design professional, the District must require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon-licensed design professional, and identify the Oregon-licensed design professional(s) who will provide design Services. See ORS 671.030(5) regarding the offer of Architectural Services, and ORS 672.060(11) regarding the offer of Engineering Services that are appurtenant to construction services.
- (6) **Performance Security.** ORS 279C.380(1)(a) provides that for Design-Build Contracts, the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional Services and related design revisions, corrective Work, and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.
- (7) **Contract Requirements.** The District must conform their Design-Build contracting practices to the following requirements:
- (a) **Design Services.** The level or type of design Services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design Services previously performed for the Project. The Services to be performed must be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
  - (b) **Professional Liability.** The Contract must clearly identify the liability of design professionals with respect to the Design-Build Contractor and the District, as well as requirements for professional liability insurance.
  - (c) **Risk Allocation.** The Contract must clearly identify the extent to which the District requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations, and faulty Work claims.
  - (d) **Warranties.** The Contract must clearly identify any express warranties made to the District regarding characteristics or capabilities of the completed Project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated Project performance and budget guidelines.
  - (e) **Incentives.** The Contract must clearly identify any economic incentives and disincentives, the specific criteria that apply, and their relationship to other financial elements of the Contract.
  - (f) **Honoraria.** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that the District is benefited from such deliverables.

**NCSD-49-0680 Energy Savings Performance Contracts**

- (1) **Generally.** These NCSD-49-0600 through NCSD-49-0690 Rules include a limited, efficient method for the District to enter into ESPCs outside the Competitive Bidding requirements of ORS 279C.335 for

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

existing buildings or structures, but not for new construction. If the District chooses not to utilize the ESPC Procurement method provided for by these NCSD-49-0600 through NCSD-49-0690 Rules, the District may still enter into an ESPC by complying with the Competitive Bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any district not subject to all the requirements of ORS 279C.335.

**(2) ESPC Contracting Method.** The ESPC form of contracting, as defined at NCSD-49-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the District, as well as the additional technical complexities associated with a Design-Build Contract. The District must only utilize the ESPC contracting method with the assistance of knowledgeable staff or Consultants who are experienced in its use. In order to utilize the ESPC contracting process, the District must be able to reasonably anticipate one or more of the following types of benefits:

- (a)** Obtaining, through an ESCO, the following types of integrated Services: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, Life-Cycle Costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning Services, M & V Services, and required documentation as a fully integrated function with a single point of responsibility;
- (b)** Obtaining, through an ESCO, an Energy Savings Guarantee;
- (c)** Integrating the Technical Energy Audit phase and the Project Development Plan phase into the design and construction phase of Work on the Project;
- (d)** Reducing the risk of design flaws, misunderstandings, and conflicts inherent in the construction process, through the integration of ESPC Services;
- (e)** Obtaining innovative design solutions through the collaboration of the members of the ESCO-integrated ESPC Services team;
- (f)** Integrating cost-effective ECMs into an existing building or structure so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;
- (g)** Preliminary design, development, implementation, and an Energy Savings Guarantee of ECMs into an existing building or structure through an ESPC as a distinct part of a major remodel of that building or structure that is being performed under a separate remodeling Contract; and
- (h)** Satisfying local energy efficiency design criteria or requirements.

**(3) Authority.** The District desiring to pursue an exemption from the Competitive Bidding requirements of ORS 279C.335 (and, if applicable, ORS 351.086) must utilize the ESPC form of contracting only in accordance with the requirements of these NCSD-49-0600 to NCSD-49-0690 Rules.

**(4) No Findings Required.** The District is only required to comply with the ESPC contracting procedures set forth in NCSD-49-0600 through NCSD-49-0690 of these Rules in order for the ESPC to be exempt from the Competitive Bidding processes of ORS 279C.335. No Findings are required for an ESPC to be exempt from the Competitive Bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the District is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in these NCSD-49-0600 through NCSD-49-0690 Rules.

**(5) Selection.** ESPC selection criteria may include those factors set forth above in NCSD-49-0640(2)(a), (b), (c), and (d). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, Proposers must disclose in their Proposals the identity of any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

- (6) Qualifications Based Selection (QBS).** Because the value of construction services predominates in the ESPC method of contracting, the QBS process mandated by ORS 279C.110 for the District in obtaining certain Consultant Services is not applicable.
- (7) Licensing.** If the ESCO is not an Oregon-licensed design professional, the District must require that the ESCO disclose in the ESPC that it is not an Oregon-licensed design professional, and identify the Oregon-licensed design professional(s) who will provide design Services. See ORS 671.030(5) regarding the offer of Architectural Services, and ORS 672.060(11) regarding the offer of Engineering Services that are appurtenant to construction services.
- (8) Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction and design and related professional Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related professional Services" include conventional design Services, commissioning Services, training Services for the District's operations and maintenance staff, and any similar professional Services provided by the ESCO under the ESPC Design-Build Contract prior to final completion of construction. M & V Services, and any Services associated with the ESCO's Energy Savings Guarantee, are not included in these ORS 279C.380(1)(a) "design and related professional Services." Nevertheless, the District may require that the ESCO provide performance security for M & V Services and any Services associated with the ESCO's Energy Savings Guarantee, if the District so provides in the RFP.
- (9) Contracting Requirements.** The District must conform their ESPC contracting practices to the following requirements:
- (a) General ESPC Contracting Practices.** An ESPC involves a multi-phase Project, which includes the following contractual elements:
    - (A)** A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the Project, the contractual terms governing the Project Development Plan for the Project, the contractual terms governing the final design and construction of the Project, the contractual terms governing the performance of the M & V Services for the Project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the Project.
    - (B)** The various phases of the ESCO's Work will include the following:
      - (i)** The Technical Energy Audit phase of the Work;
      - (ii)** The Project Development Plan phase of the Work;
      - (iii)** A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration, and related Services to actually construct the Project; and
      - (iv)** A final phase of the Work whereby the ESCO, independently or in cooperation with an independent Consultant hired by the District, performs M & V Services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.
  - (b) Design-Build Contracting Requirements in ESPCs.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the District must conform

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

its Design-Build contracting practices to the Design-Build contracting requirements set forth in NCSD-49-0670(7).

- (c) Pricing Alternatives. The District may utilize one of the following pricing alternatives in an ESPC:
- (A) A fixed price for each phase of the Services to be provided by the ESCO;
  - (B) A cost-reimbursement pricing mechanism, with a maximum not-to-exceed price or a GMP; or
  - (C) A combination of a fixed fee for certain components of the Services to be performed, a cost-reimbursement pricing mechanism for the construction services to be performed with a GMP, a single or annual fixed fee for M & V Services to be performed for an identified time period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the Project (in the event an annual M & V Services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the District, the ESCO's M & V Services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the District's future obligation to pay the M & V Services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).
- (d) Permitted ESPC Scope of Work. The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will completely pay for themselves or substantially pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these NCSD-49-0600 through NCSD-49-0690 Rules does not include maintenance services for the Project facility.

**NCSD-49-0690 Construction Manager/General Contractor Services ("CM/GC Services")**

(1) **General.** The CM/GC Method is a technically complex project delivery system. The District must use this contracting method only with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff, consultants, or both staff and consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, public contracting, and project management. Unlike the Design-Build form of contracting, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined Contract obligations, including responsibilities as part of the Project team along with the District and design professional, although with the CM/GC Method there is a separate contract between the District and design professional. In order to utilize the CM/GC Method, the District must be able to reasonably anticipate the following types of benefits:

- (a) Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The District may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (b) **Cost Savings.** With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings. The District may consider value engineering, building systems analysis, Life-Cycle Costing analysis, and construction planning that lead to cost savings. The District must specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or
  - (c) **Technical Complexity.** With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the District, design professionals, any District project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific Project challenges through preconstruction services. The District may consider the need for CM/GC input on issues such as operation of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling Projects, and Projects requiring complex phasing or highly coordinated scheduling.
- (2) **Authority.** The District must use the CM/GC form of contracting only in accordance with the requirements of these division 49 Rules and ORS 279C.337, when a competitive bidding exemption is approved. See particularly NCSD-49-0600 on "Purpose" and NCSD-49-0620 on "Use of Alternative Contracting Methods."
- (3) **Selection.** CM/GC selection criteria may include those factors set forth in NCSD-49-0640(2)(b).
- (4) **Basis for Payment.** The CM/GC process adds specified construction manager Personal Services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for construction Work and Personal Services rendered, which together must not exceed the GMP. See GMP definition at NCSD-49-0610(7) and pricing mechanisms at NCSD-49-0660.
- (5) **Contract Requirements.** The District shall conform their CM/GC contracting practices to the following requirements:
- (a) **Nature of the Initial CM/GC Services Contract Document.** A solicitation for CM/GC Services is a Procurement for a Public Improvement, since the scope of the Procurement includes not only pre-construction Personal Services to be performed by the CM/GC, but also construction Work that is expected to result in a completed Public Improvement. In the traditional CM/GC Services contracting approach, the text of the resulting CM/GC Services Contract will include comprehensive contract provisions that will not only fully govern the relationship between the District and the CM/GC for the pre-construction Personal Services, but will also include the general contract provisions that will control the CM/GC's providing of the construction Work necessary to complete the project (with any remaining necessary construction-related contract provisions being added through Early Work amendments to the Contract, the GMP amendment to the Contract or, if necessary, a conventional amendment to the Contract). The traditional CM/GC Services contracting approach, however, also contemplates that the District will only authorize the CM/GC to perform the preconstruction Personal Services when the Contract is first executed unless construction Work is specifically included in the initial CM/GC Contract. Under this approach, the construction phase or phases of the CM/GC Services project are not yet authorized and the Contract only becomes a Public Improvement Contract once the parties amend the Contract, through an Early Work or a GMP amendment, to authorize the construction of a portion of the project or the entire project. See also OAR 839-025-0020, regarding the Bureau of Labor and Industries' determination of when a Contract for CM/GC Services becomes a "public works" Contract for purposes of paying prevailing wage rates for construction Work under the CM/GC Contract.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (b) Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP fixed Contract price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place at the end of the design development phase of the project. The supporting information for the GMP must define both what Personal Services and construction Work are included and excluded from the GMP, fixed Contract price or other maximum Contract Price. A set of project drawings and Specifications must be produced establishing the scope of construction Work contemplated by the GMP fixed Contract price or other maximum Contract Price.
- (c) Adjustments to the GMP Fixed Contract Price or Other Maximum Contract Price. The Contract must clearly identify the standards or factors under which changes or additional construction Work will be considered outside of the scope of Work that warrants an increase in the GMP, fixed Contract price or other maximum Contract Price, as well as criteria for decreasing the GMP, fixed Contract price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of the Work defined at the establishment of the GMP, fixed Contract price or other maximum Contract price or most recent Amendment to the GMP, fixed Contract price or other maximum Contract Price. An increase to the scope of the Work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the District and other changes to the Work.
- (d) Cost Savings. The Contract must clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP; fixed Contract price or other maximum Contract price, that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the District's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the District.
- (e) Cost Reimbursement. The Contract must clearly identify what items or categories of items are eligible for cost reimbursement within the GMP or other maximum Contract Price, including any category of GC Work costs (a general grouping of direct costs that are not separately invoiced, subcontracted, or included within either overhead or fee), and may also incorporate a mutually agreeable cost-reimbursement standard.
- (f) Audit. Cost reimbursements must be made subject to final audit adjustment, and the Contract must establish an audit process to ensure that Contract costs are allowable, properly allocated, and reasonable.
- (g) Fee. Compensation for the CM/GC's Personal Services and construction Work, where the Contract uses a GMP, shall include a fee that is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the District selects the GM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, must be identified during and become an element of the selection process. It must subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing preconstruction services during a separate preconstruction phase.
- (h) Incentives. The Contract must clearly identify any economic incentives, the specific criteria that apply, and their relationship to other financial elements of the Contract (including the GMP, fixed Contract price or other maximum Contract price).

## North Clackamas School District Public Contracting Rules

### Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (i) Controlled Insurance Programs. For Projects where an owner-controlled or contractor-controlled insurance program is permitted under ORS 737.602, the Contract must clearly identify whether an owner-controlled or contractor-controlled insurance program is anticipated or allowable. If so, the Contract must clearly identify (1) anticipated cost savings from reduced premiums, claims reductions, and other factors, (2) the allocation of cost savings, and (3) safety responsibilities, incentives or both safety responsibilities and incentives.
- (j) Early Work. The RFP must clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract price, or other maximum Contract Price.
- (k) Subcontractor Selection. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other District requirements. Within the scope of ORS 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:
  - (A) Absent a written justification prepared by the CM/GC and approved by the District as more particularly provided for in this section, the CM/GC's Subcontractor selection process must be "competitive", meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the District, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;
  - (B) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
    - (i) The CM/GC must prepare and submit a written justification to the District, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;
    - (ii) For a "sole source" selection of a subcontractor to proceed, the District must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
    - (iii) The CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the District;
    - (iv) The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the District; and

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (v) The District must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
- (C) A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;
- (D) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the District or another independent third party.
- (I) Subcontractor Approvals and Protests. The Contract must clearly establish whether the District must approve subcontract Awards, and to what extent, if any, the District will resolve or be involved in the resolution of protests of the CM/GC's selection of subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of subcontractor and supplier protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the District must retain the right to monitor the subcontracting process in order to protect the District's interests and to confirm the CM/GC's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.
- (m) CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), the Contract must establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC's RFP proposal to perform CM/GC Services for the project, a detailed proposal for performance of the Work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the District, the CM/GC's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.
- (n) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

qualification and selection process involved. Unless the District and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

- (A) Allowing a subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and
  - (B) Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.
- (o) Performance and Payment Bonds. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the District to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the GMP, fixed price or other maximum contract price, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed price or other maximum contract price must be increased, the performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased GMP, fixed price or other maximum contract price.
- (p) Independent Review of CM/GC Performance; Conflicts of Interest. If the District requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction Personal Services, construction Work or both pre-construction Personal Services and construction Work, the District must obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:
- (A) The CM/GC's performance of both pre-construction Personal Services and construction Work that are included within the definition of CM/GC Services, consistent with ORS 279C.307(2); or
  - (B) The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.
- (q) Socio-Economic Programs. The Contract must clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and the District.

## **CONTRACT PROVISIONS**

### **NCSD-49-0800 Required Contract Clauses**

Except as provided by NCSD-49-0150 and NCSD-49-0160, the District must include in all Solicitation Documents for Public Improvement Contracts all of the ORS 279C-required Contract clauses, as set forth in the checklist contained in NCSD-49-0200(1)(c) regarding Solicitation Documents. The following series of Rules provides further guidance regarding particular Public Contract provisions.

**NCSD-49-0810 Waiver of Delay Damages against Public Policy**

The District must not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from the District's unreasonable delay in performing the Contract. However, Contract provisions requiring Notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling Contract disputes, or providing for reasonable liquidated damages are permissible.

**NCSD-49-0815 BOLI Public Works Bond**

Pursuant to ORS 279C.830(2), the Specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the Project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

**NCSD-49-0820 Retainage**

**(1) Withholding of Retainage.** Except as required by law, the District will not retain an amount in excess of 5% of the Contract Price for Work completed. If the Contractor has performed at least 50% of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the District may, in its discretion, reduce or eliminate Retainage on any remaining progress payments. The District must respond in Writing to all such applications within a reasonable time. When the Contract Work is 97½% completed, the District may, at its discretion and without application by the Contractor, reduce the retained amount to 100% of the value of the remaining unperformed Contract Work. The District may at any time reinstate Retainage. Retainage must be included in the final payment of the Contract Price.

**(2) Form of Retainage.**

**(a)** A Contractor may submit and the District shall accept from a Contractor in lieu of withholding moneys for all or a portion of the retainage required under a public contract:

**(A)** Bonds, securities, or other instruments that are deposited and accepted as provided in Section (4)(a) of this Rule; or

**(B)** A surety bond deposited as provided in Section (4)(b) of this Rule.

**(b)** The District may reject bonds, securities or other instruments that a contractor submits under paragraph (a)(A) of this subsection of a surety bond that the contractor submits under paragraph (a)(B) of this subsection only if the contracting agency first finds in writing good cause for the rejection that is based on unique project circumstances.

**(3) Deposit in Interest-Bearing Accounts.** Upon request of the Contractor, the District shall deposit the Retainage, as the retainage accumulates, in an interest-bearing account in a bank or other financial institution for the benefit of the District. Earnings on such account shall accrue to the Contractor.

**(4) Alternatives to Cash Retainage.** In lieu of cash Retainage to be held by the District, the Contractor may substitute one of the following:

**(a) Deposit of bonds, securities, or other instruments.**

**(A)** The Contractor may deposit bonds, securities, or other instruments with the District or in any bank or other financial institution for the District to hold for the District's benefit in lieu of moneys held as Retainage. If the Contractor submits bonds, securities or other instruments as provided in this subsection, the District shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

of the reduction to the Contractor. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor.

- (B) Bonds, securities, or other instruments deposited or acquired in lieu of cash Retainage must be of a character approved by the District, including, but not limited to:
  - (i) Bills, certificates, notes, or bonds of the United States.
  - (ii) Other obligations of the United States or agencies of the United States.
  - (iii) Obligations of a corporation wholly owned by the federal government.
  - (iv) Indebtedness of the Federal National Mortgage Association.
  - (v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
  - (vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.
- (C) Upon the District's determination that all requirements for the protection of the District's interests have been fulfilled, it must release to the Contractor all bonds and securities deposited in lieu of Retainage.
- (b) Deposit of Surety Bond. A Contractor may deposit a surety bond for all or any portion of the amount of funds retained, or to be retained, by the District in substantially the form specified in ORS 701.435. A Contractor depositing such a bond must accept surety bonds from its subcontractors and suppliers in lieu of Retainage in accordance with ORS 279C.560. A surety bond that a Contractor submits under this section must be executed by a surety bonding company that is authorized to transact surety business in this state and may not be a surety obligation of an individual.

(5) **Recovery of Additional Costs.** The District may recover from the Contractor the additional costs incurred in the proper handling of Retainage alternatives requested by the Contractor incurred after the date on which the Contractor submits a bid or proposal to the District by reduction of the final payment. These costs are not reimbursable project costs and the District is not responsible for paying these costs.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the District shall retain 25% of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the District. The District shall pay the Contractor the amount retained under this provision within 14 Days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see 279C.845(1) regarding the requirement for both Contractors and subcontractors to file certified statements with the District). See BOLI rule at OAR 839-025-0010.

**NCSD-49-0830 Contractor Progress Payments**

(1) **Request for Progress Payments.** Each month the Contractor must submit to the District their Written request for a progress payment based on an estimated percentage of Contract completion. At the District's discretion, this request may also include the value of material to be incorporated in the completed Work, which has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the District will make a progress payment to the Contractor, which must be equal to:

- (a) The value of completed Work;
- (b) Less those amounts that have been previously paid;

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (c) Less other amounts that may be deductible or owing and due to the District for any cause; and
- (d) Less the appropriate amount of Retainage.

**(2) Progress Payments Do Not Mean Acceptance of Work.** Progress payments must not be construed as an acceptance or approval of any part of the Work, and must not relieve the Contractor of responsibility for defective workmanship or material.

**NCSD-49-0840 Interest**

**(1) Prompt Payment Policy.** The District must pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

**(2) Interest on Progress Payments.** Late payment interest must begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after District approval of payment (the "Progress Payment Due Date"). The interest rate must equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, up to a maximum rate of 30%.

**(3) Interest on Final Payment.** Final payment on the Contract Price, including Retainage, must be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment must thereafter accrue at the rate of 1½% per month until paid.

**(4) Settlement or Judgment Interest.** In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment must be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, must accrue from the later of the Progress Payment Due Date, or 30 Days after the Contractor submitted a claim for payment to the District in Writing or otherwise in accordance with the Contract requirements.

**NCSD-49-0850 Final Inspection**

**(1) Notification of Completion; Inspection.** The Contractor must notify the District in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving the Contractor's Notice, the District will inspect the Project and Project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

**(2) Acknowledgment of Acceptance.** When the District finds that all Work required under the Contract has been completed satisfactorily, the District must acknowledge acceptance of the Work in Writing.

**NCSD-49-0860 Public Works Contracts**

**(1) Generally.** ORS 279C.800 through 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(6), and requirements for payment of prevailing wage rates. Also see BOLI rules at OAR Chapter 839.

**(2) Required Contract Conditions.** As detailed in the above statutes and Rules, every Public Works Contract must contain the following provisions:

- (a) District authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).
- (b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
- (c) Employer Notice to employees of hours and Days that employees may be required to Work, as set forth in ORS 279C.520(2).

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

- (d) Contractor-required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
  - (e) Requirement for payment of Prevailing Rate of Wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal Prevailing Rate of Wage.
  - (f) A requirement for filing a public works bond by the Contractor and every subcontractor, as set forth in ORS 279(C).830(1)(a).
- (3) **Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the Procurement package (such as the Project Manual, Bid or Proposal booklets, Request for Quotes, or similar Procurement Specifications), must contain the following provisions:
- (a) The State Prevailing Rate of Wage, and, if applicable, the federal Prevailing Rate of Wage, as required by ORS 279C.830(1)(a):
    - (A) Physically contained within or attached to hard copies of Procurement Specifications;
    - (B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference in compliance with OAR 839-025-0020; or
    - (C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.
  - (b) If both state and federal prevailing rates of wage apply, a requirement that the Contractor shall pay the higher of the applicable state or federal prevailing rate of way to all workers. See BOLI rules at OAR 839-025-0020 and 839-025-0035.
  - (c) A requirement for filing a public works bond by the Contractor and every subcontractor, as set forth in ORS 279C.830(2).

**NCSD-49-0870 Specifications; Brand Name Products**

- (1) **Generally.** The District's Solicitation Document must not expressly or implicitly require any product by Brand Name or mark, nor must it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).
- (2) **Equivalents.** The District may identify products by Brand Names as long as the following language: "approved equal," "or equal," "approved equivalent," or "equivalent," or similar language is included in the Solicitation Document. The District must determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."
- (3) **Product Exemption.** The Superintendent is delegated the authority to exempt products from the prohibition in Section (1) of this Rule, pursuant to ORS 279C.345(2), upon any of the following Written Findings:
  - (a) It is unlikely that the exemption will encourage favoritism in the Awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts;
  - (b) The Specification of a product by Brand Name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to the District;
  - (c) There is only one manufacturer or seller of the product of the quality required; or
  - (d) Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

**NCSD-49-0880 Records Maintenance; Right to Audit Records**

- (1) **Records Maintenance; Access.** Contractors and subcontractors must maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors must maintain all other records necessary to clearly document (i) their performance, and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors must make all records pertaining to their performance and any claims under a Contract (the books, fiscal records, and all other records, hereafter referred to as "Records") accessible to the District at reasonable times and places, whether or not litigation has been filed as to such claims.
- (2) **Inspection and Audit.** The District may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person must maintain such Records that relate to the cost or pricing data for three years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.
- (3) **Records Inspection; Contract Audit.** The District and its authorized representatives must be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in Section (1) of this Rule. The Contractor and subcontractor must maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of three years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

**NCSD-49-0890 District Payment for Unpaid Labor or Supplies**

- (1) **Contract Incomplete.** If the Contract is still in force, the District may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or Services, and charge the amount against payments due or to become due to the Contractor under the Contract. If the District chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety must not be relieved from liability for unpaid claims.
- (2) **Contract Completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims must be referred to the Contractor's surety for resolution. The District must not make payments to subcontractors or suppliers for Work already paid for by the District.

**NCSD-49-0900 Contract Suspension; Termination Procedures**

- (1) **Suspension of Work.** In the event the District suspends performance of Work for any reason considered by the District to be in the public interest other than a labor dispute, the Contractor must be entitled to a reasonable extension of Contract time and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.
- (2) **Termination of Contract by Mutual Agreement for Reasons Other Than Default.**
- (a) **Reasons for termination.** The parties may agree to terminate the Contract or a divisible portion thereof if:
- (A) The District suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and
- (B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

**North Clackamas School District Public Contracting Rules**  
Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

(b) **Payment.** When a Contract, or any divisible portion thereof, is terminated pursuant to this Section (2), the District must pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The District must also pay for all Work completed based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment must be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public Interest Termination by the District.** The District may include in its Contracts terms detailing the circumstances under which the Contractor must be entitled to compensation as a matter of right in the event the District unilaterally terminates the Contract for any reason considered by the District to be in the public interest.

(4) **Responsibility for Completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this Rule must not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies Cumulative.** The District may, at its discretion, avail itself of any or all rights or remedies set forth in these Rules, in the Contract, or available at law or in equity.

### **CONTRACT AMENDMENTS AND CHANGE ORDERS**

#### **NCSD-49-0910 Public Improvement Contract Amendments and Changes to the Work**

(1) **Definitions for Rule.** As used in this Rule with regard to Public Improvement Contracts:

(a) **"Amendment"** means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the District and the Contractor.

(b) **"Changes to the Work"** means a mutually agreed-upon Change Order, or a Construction Change Directive or other Written order issued by the District or its authorized representatives to the Contractor requiring a Change in the Work within the general scope of a Public Improvement Contract and issued under its Changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or Contract time for the Changed Work.

(2) **Change Orders.** Changes to the Work are anticipated in construction and, accordingly, the District shall include Change provisions in all Public Improvement Contracts that detail the scope of the Changes clause, provide pricing mechanisms, authorize the District or its authorized representative(s) to issue Changes to the Work, and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's Changes provisions, they are not considered to be new Procurements, and an exemption from Competitive Bidding is not required for their issuance by the District.

(3) **Change Order Authority.** The District may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such Changes are limited by the above definition of that term.

(4) **Contract Amendments.** Public Improvement Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements, and an exemption from Competitive Bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities

**North Clackamas School District Public Contracting Rules**

Division 49 – Public Contracting Rules for Public Improvements and/or Public Works

in Work, Project site, relative dollar values, differences in risk allocation, and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, Competitive Quotes, sole-source, or Emergency Contract;

- (c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the Findings supporting the Competitive Bidding exemption; and
- (d) The Amendment is made consistent with this Rule and other applicable legal requirements.

**END OF DIVISION 49**

# NCSD: 2024 Public Contracting Rules

*NCSD Board Meeting  
Discussion  
May 23, 2024*

274



**NORTH CLACKAMAS SCHOOL  
DISTRICT NO. 12**

**PUBLIC CONTRACTING RULES**

**2024**

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# 2024 PUBLIC CONTRACTING RULES UPDATE

- **Tonight:**

- Review Public Contracting in Oregon
- Review NCSD's Rules
- Review Proposed Changes
- Questions / Discussion

- **Next Board Meeting (June 6, 2024):**

- Scheduled Adoption of 2024 NCSD Public Contracting Rules

275

# PUBLIC PROCUREMENT IN OREGON

- State Procurement Laws
- Attorney General's Model Rules
- NCSD Board of Directors =  
Local Contract Review Board
- Some procurement thresholds and processes the  
Board has limited discretion
- Some procurement thresholds and processes the  
Board has substantial discretion

The screenshot shows the Oregon Department of Justice website. At the top, it says "Oregon Department of Justice" and "ATTORNEY GENERAL ELLEN F. ROSENBLUM". There is a search bar and a navigation menu with categories: ATTORNEY GENERAL, CHILD SUPPORT, CONSUMER PROTECTION, CHARITIES, VICTIMS & SURVIVORS, and MEDIA. Below the menu, there are sub-categories: Office of the Attorney General, Civil Rights, Divisions, Client Resources, Public Records, Forms, Manuals & Reports, and Careers. The main content area is titled "2023 Model Public Contracting Rules Revisions" and includes a "CLIENT RESOURCES" section with links to "Attorney General Model Rules" and "Attorney General's Model Public Contracting Rules Revisions". A list of updates is shown, including "Division 46", "Permanent Administrative Order - Division 46", and "UPDATE: Division 46, 137-046-0140 (Proposed Redlined Edits)".

# NCSD PROCUREMENT RULES

- First adopted in 2007
- Updated in at least 2010 and 2016
- Recent legislation changes & Attorney General's Rules updated to reflect changes
- Board Policy DJC requires NCSD Rules update when legislation and model rules are updated

# NCSD PROPOSED 2024 RULES DEVELOPMENT PROCESS

- Reviewed Model Rules
- Reviewed other jurisdictions public contracting rules
- Sought staff user feedback (>20 focus interviews)
- Consulted with legal counsel

278

# NCSD PROPOSED 2024 RULES CHANGES SUMMARY

- Increase thresholds
- Implement new rules for retainage for Public Improvement Projects
- Seek at least one quote from a woman-owned, veteran-owned or minority-owned business
- Recognize change to state definition of disadvantaged business
- Implement new price evaluation rules for architects and engineers

279

# CURRENT THRESHOLDS

Current Thresholds	Small	Intermediate	Formal
Goods and Trade Services	< \$10,000	\$10,000 - \$150,000	> \$150,000
Personal Services	< \$50,000	\$50,000 - \$150,000	> \$150,000
Architect, Engineers & Related Services (A/E)	< \$100,000	\$100,000 - \$250,000	> \$250,000
Public Improvement	< \$5,000	\$5,000 - \$100,000	> \$100,000

- Where state maximums existed in 2016, state maximums were used

# PROPOSED THRESHOLDS

Proposed Thresholds	Small	Intermediate	Formal
Goods and Trade Services	< \$25,000	\$25,000 - \$250,000	> \$250,000
Personal Services	< \$75,000	\$75,000 - \$250,000	> \$250,000
Architect, Engineers & Related Services (A/E)	< \$100,000	\$100,000 - \$250,000	> \$250,000
Public Improvement	< \$25,000	\$25,000 - \$100,000	> \$100,000

- Reflect current state maximums
- Where no state maximum provided, 2016 NCSD Rules with inflation applied and rounded

# NEXT STEPS

- Questions?
- Discussion?
- Staff will seek action on the proposed resolution at the next Board Meeting





**RESOLUTION NO.**

A RESOLUTION OF THE BOARD OF DIRECTORS OF NORTH CLACKAMAS SCHOOL DISTRICT NO. 12, ACTING AS THE LOCAL PUBLIC CONTRACT REVIEW BOARD, AMENDING THE DISTRICT'S PUBLIC CONTRACTING RULES TO ADDRESS STATUTORY AND ADMINISTRATIVE RULE CHANGES.

**RECITALS**

- A. The Board of Directors of North Clackamas School District No. 12 ("District") acts as the Local Public Contract Review Board ("Board") pursuant to ORS 279A.060.
- B. ORS 279A.065 empowers such boards to adopt rules of procedure for public contracts, and the District has adopted such rules ("Current Rules").
- C. ORS 279A.065(5)(b) requires a local contracting agency to review its rules for revision each time the Attorney General modifies the Model Rules for Public Contracts. The Attorney General has updated the Model Rules in 2021 and 2023 in light of amendments to the Public Contracting Code in the 2021 and 2023 legislature sessions.
- D. The Board deems it necessary and advisable to adopt updated rules ("2024 Rules") to address these statutory and rule changes, to improve the format and usability of the District's rules, and to provide for greater public transparency in regard to the District's procurement procedures.

**RESOLUTION**

- 1. The Board hereby adopts the 2024 Rules attached as Exhibit A as the District's Public Contracting Rules.
- 2. The District's 2024 Rules supersede and replace the District's Current Rules for procurements advertised or first solicited on or after July 1, 2024. Procurements advertised or first solicited prior to July 1, 2024 shall continue to be processed under the Current Rules.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
North Clackamas School District No. 12 Board Chair

\_\_\_\_\_  
North Clackamas School District No. 12 Superintendent/Clerk



Code: DJC  
Adopted: 3/17/11  
Revised/Readopted: 2/13/14; 2/10/22

## **Bidding Requirements**

The Board is the Local Contract Review Board (LCRB) for the district. All public contracts shall be invited in accordance with applicable competitive procurement provisions of Oregon Revised Statutes and adopted public contracting rules.

The Board, acting as its own LCRB, adopts its own rules of procedure that will govern district purchasing. Consequently, the model rules adopted by the Attorney General shall not apply to the district. The district's rules may include portions of the *Oregon Attorney General's Model Public Contract Rules* OAR Chapter 137, Divisions 046 through 049 in effect at the time this policy is adopted.

The district shall procure the construction manager/general contractor services in accordance with model rules the Attorney General adopts under Oregon Revised Statute (ORS) 279A.065(3).

Additionally, the Board may include as part of its rules portions of the Oregon Department of Administrative Services rules governing Public Contract Exemptions, OAR Chapter 125, Divisions 246-249 in effect at the time this policy is adopted.

The Board may make the written findings required by law for exemptions from competitive bidding. Such findings shall be maintained by the district and made available on request.

The district shall review its rules each time the Attorney General adopts a modification of the model rules, as required by ORS 279A.065 (6)(b), to determine whether any modifications need to be made to district rules to ensure compliance with statutory changes. New rules, as necessary, shall 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, acting as the LCRB, 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.

Procurements for services estimated to be in excess of \$250,000 shall go through the cost analysis and feasibility process described in ORS 279B.

END OF POLICY

**Legal Reference(s):**

ORS Chapters [279](#), [279A](#), [279B](#) and [OAR Chapter 125](#), Divisions 246-249  
[279C](#)

OR. DEP'T OF JUSTICE, OR. ATT'Y GENERAL'S MODEL PUBLIC CONTRACT RULES MANUAL.

**Cross Reference(s):**

DJ - District Purchasing

DJG - Vendor Relations

EH - Electronic Data Management

**CONTRACT AWARD: YONDR PHONE POUCHES**  
**SECONDARY SCHOOLS GRADES 6-12**

**DISCUSSION**  
Agenda Item #6  
May 23, 2024

**ORIGINATED BY:**

The Student Investment Account allows us the opportunity to provide our schools with much needed funds that support the health and wellness of our students across the district. A Request for Purchase (RFP) process was conducted. The RFP allowed the opportunity to research solutions to phone distraction and addiction in our school spaces and YONDR most closely aligned with the core values that drive North Clackamas School District.

**BUDGET IMPACT/SOURCE OF FUNDS:**

This contract is funded from the Student Investment Account in the category of behavioral health and wellness. The contract is up to an amount of \$300,000.

**BACKGROUND:**

In the 2023-24 school year, the North Clackamas School District has conducted an analysis of our current personal electronic device policies and practices by seeking feedback from community, staff, and students. Community outreach included 8 events in which the community were able to engage in conversations, discussions and share feedback both in person and via a survey. Staff involvement included meetings with 8 different secondary school staffs resulting in discussion captured through brainstorming and conducting root cause analysis of the problem with cell phones. Finally, students were given the opportunity to share feedback through survey data. Overwhelmingly, the qualitative and quantitative data that was collected and analyzed by our secondary team showed a need to implement significant changes and improvements to our practices around cell phone use during school hours.

In an ongoing effort to continue supporting the mental health of NCS D students, the proposed contract with YONDR will help reinforce a phone free space during school hours. Research has linked correlations between increased use of cell phones and social media with increased depression, school loneliness, and worse academic outcomes.

In addition, in order to effectively address cell phone use during school hours, teachers are put in positions of monitoring and disciplining students which takes away from instructional time and hinders the relationships that teachers are working to build with students. By having a clear and consistent practice by using YONDR, no single teacher will be put in a position to have a power struggle that takes away from instructional time and an opportunity to build relationships.

### Survey Data

Community Survey 1,280 Responses (297 Staff Members, 566 Guardians, 417 Students)	Student Only Survey 805 High School Students (95% confidence rate and <4% margin of error)
<ul style="list-style-type: none"> <li>● <b>65% report cell phone use is a problem</b></li> <li>● <b>85% report cell phone use has negative impacts including</b> <ul style="list-style-type: none"> <li>○ <b>Distraction and reduced engagement (86%)</b></li> <li>○ <b>Reduced socialization (65%)</b></li> <li>○ <b>Cyber bullying (62%)</b></li> <li>○ <b>Increased Anxiety and Depression (59%)</b></li> <li>○ <b>Harassment (58%)</b></li> <li>○ <b>Inappropriate content (57%)</b></li> <li>○ <b>Inciting violence (39%)</b></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● <b>I use phone for non instructional reasons (86%)</b> <ul style="list-style-type: none"> <li>○ <b>Texting Friends (52%)</b></li> <li>○ <b>Texting Family (67%)</b></li> <li>○ <b>Social Media (31%)</b></li> <li>○ <b>Watch Videos (16%)</b></li> <li>○ <b>Play Games (16%)</b></li> </ul> </li> <li>● <b>I am negatively impacted by others using their phone (36%)</b></li> <li>● <b>I'm negatively impacted by my phones in the following ways</b> <ul style="list-style-type: none"> <li>○ <b>Friend Relationships (23%)</b></li> <li>○ <b>Grades (49%)</b></li> <li>○ <b>Attendance (19%)</b></li> <li>○ <b>Family Relationships (24%)</b></li> <li>○ <b>Mental Health (47%)</b></li> </ul> </li> </ul>

**PRESENTER / STAFF CONTACTS:**

Ivonne Dibblee, Assistant Superintendent of Education

Ryan Richardson, Associate Director of Secondary Programs and District Athletic Director

**ATTACHMENTS:**

[Presentation Slides](#)

[JFCEB: Personal Electronic Devices and Social Media - Student](#)

[JFCEB-AR - Personal Electronic Devices and Social Media – Student\\*\\*](#)

Article: [Get Phones Out of Schools Now](#)

Article: [How one Connecticut Middle School Won the Battle Against Cell Phones](#)



# Supporting Teen Wellness:

## Creating Phone Free Spaces



# Research

## Phones and Teens





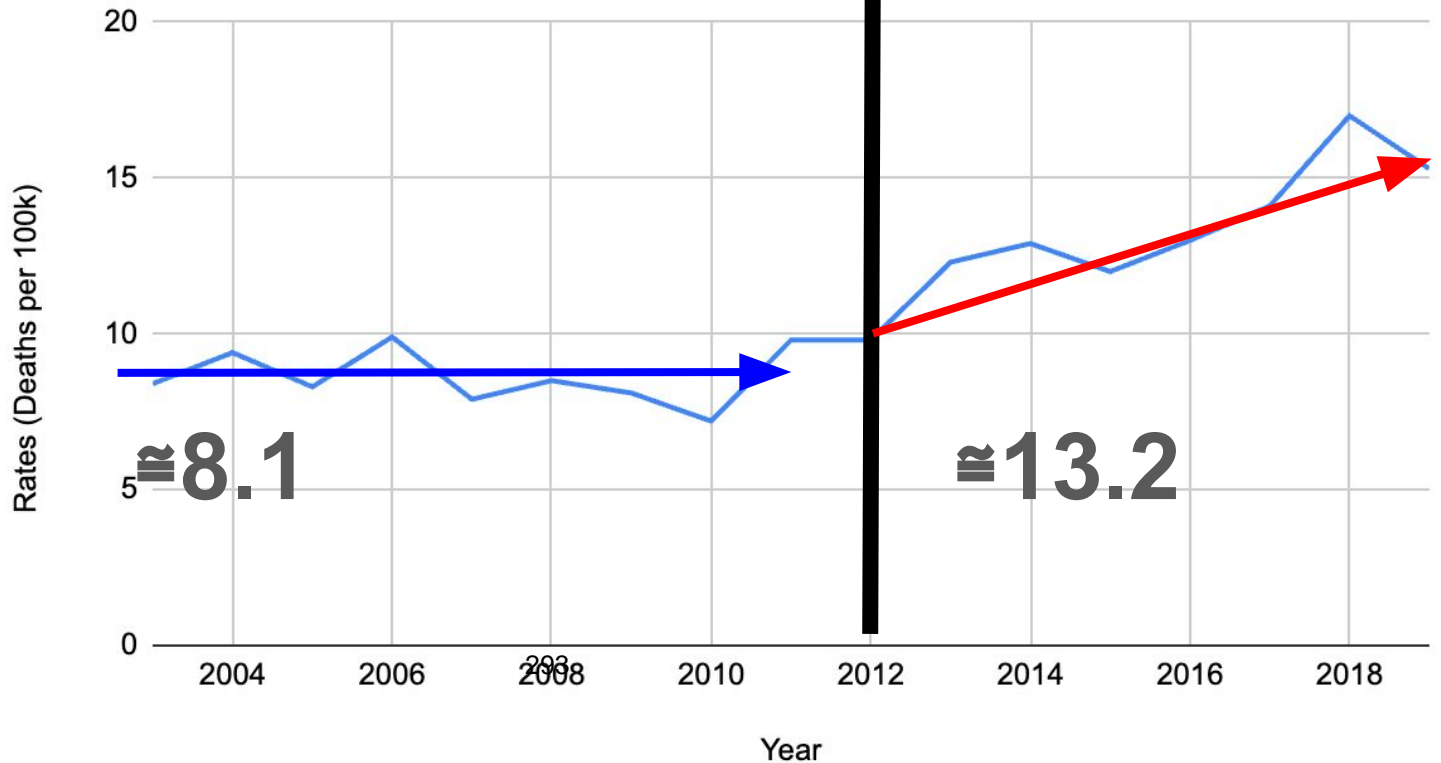
**2012:**  
Majority of households own a smartphone

50% of teens on social media every day

**2013:**  
75 -80% of teens on social media every day

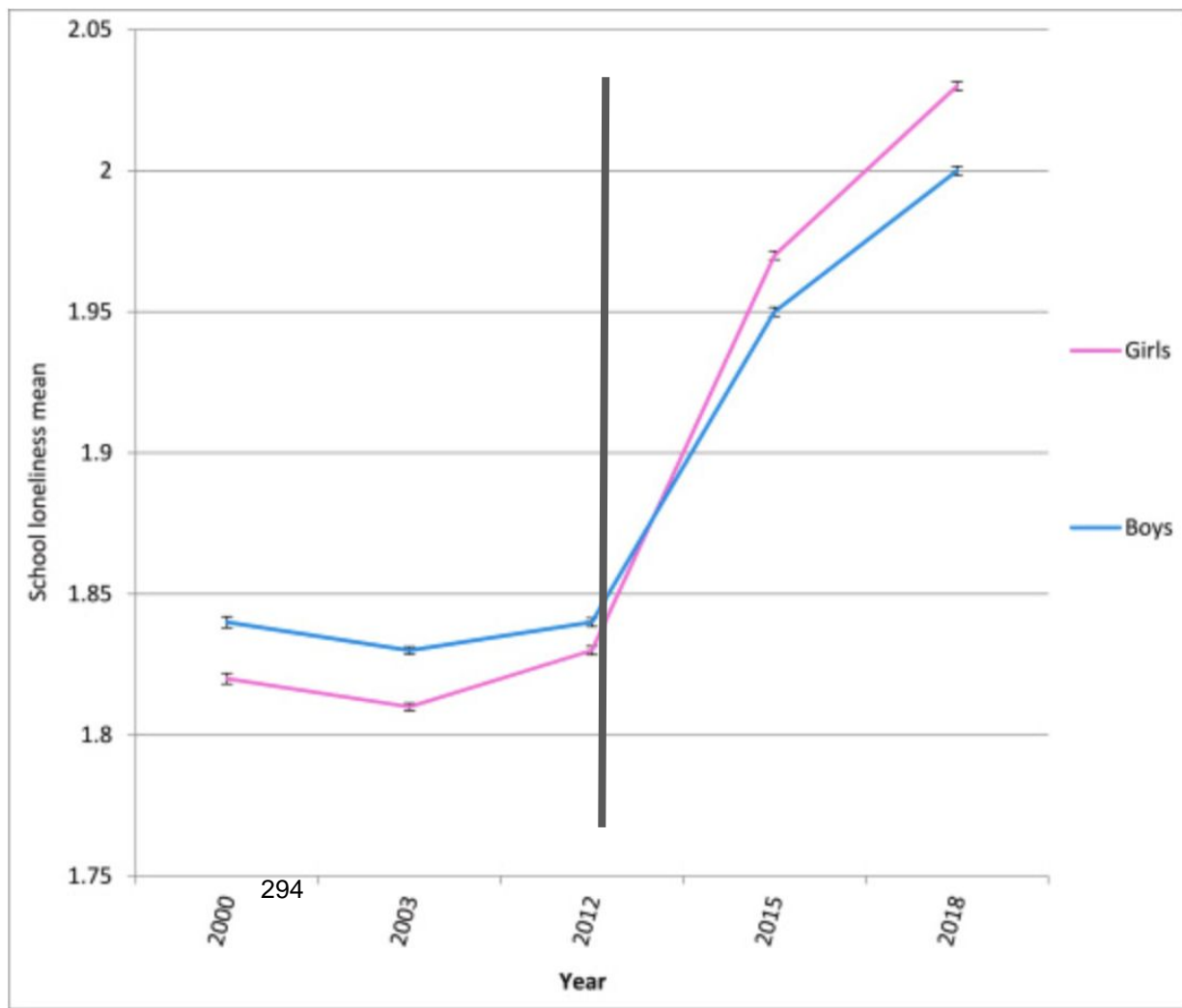
# Oregon Death Rates

Rates (Deaths per 100k) vs. Year



# Reports of School Loneliness

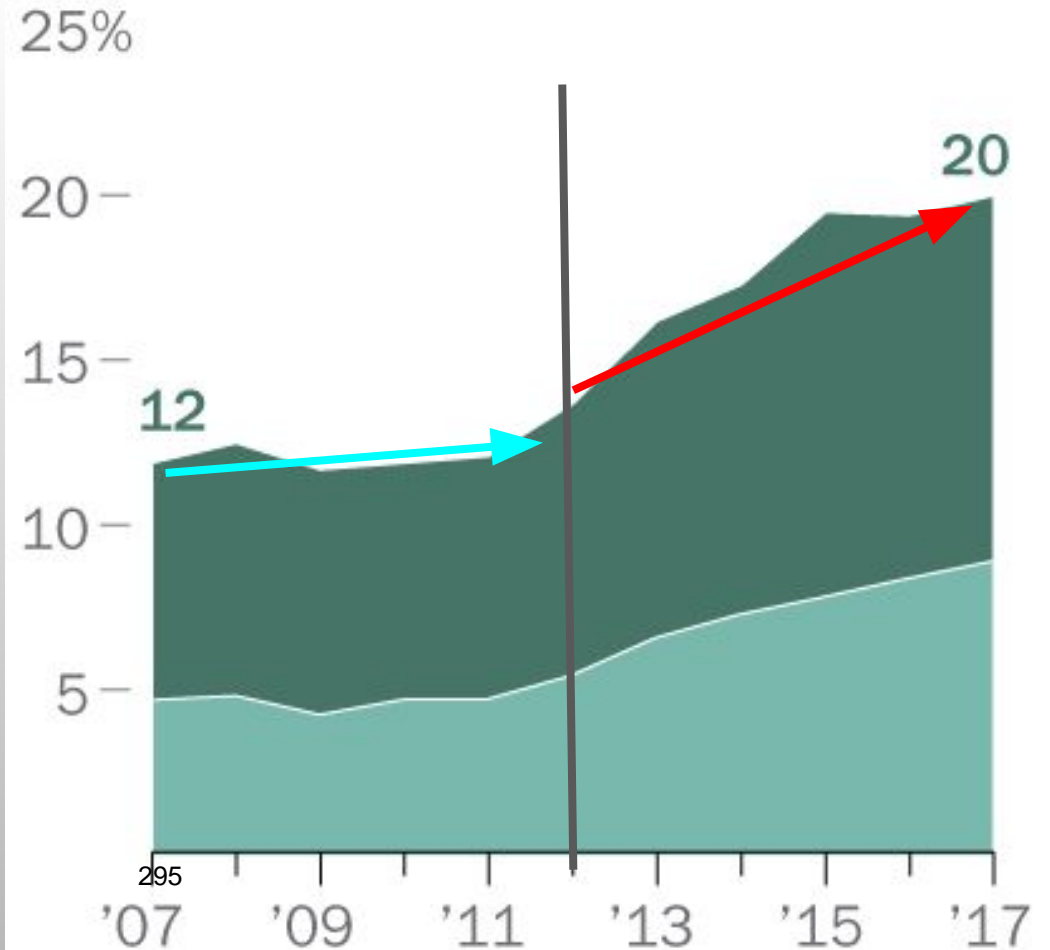
Source: Twenge, J.M., Haidt, J., Blake, A.B., McAllister, C., Lemon, H. and Le Roy, A. (2021), Worldwide increases in adolescent loneliness. *Journal of Adolescence*, 93: 257-269.  
<https://doi.org/10.1016/j.adolescence.2021.06.006>



# Percent of Girls Ages 13-17 with a Depressive Episode

Source: A Growing Number of American Teenagers - Particularly Girls - are facing depression, 2019

<https://www.pewresearch.org/short-reads/2019/07/12/a-growing-number-of-american-teenagers-particularly-girls-are-facing-depression/>



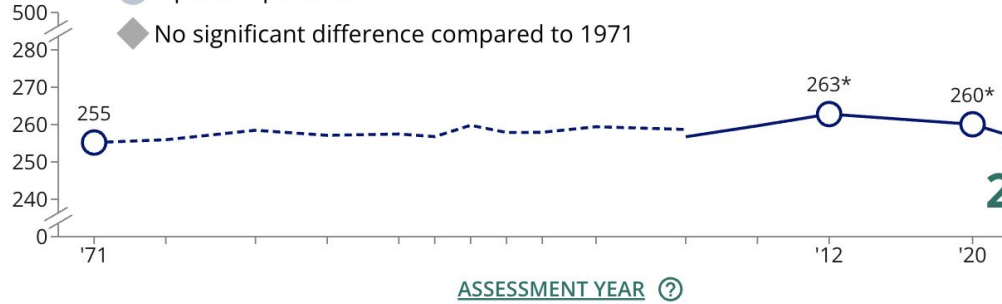
# Test Scores (National Assessment Educational

## READING

SCALE SCORE ⓘ

↓ 4 pts compared to 2020

◆ No significant difference compared to 1971



## MATHEMATICS

SCALE SCORE ⓘ

↓ 9 pts compared to 2020

↑ 5 pts compared to 1973



# Connecting Phone Use, Social Media & Outcomes



Less sleep, less time with friends, which increase mental health concerns

[Source LINK](#)



Being phubbed is associated with increased feelings of loneliness

297

[Source LINK](#)



Taking students' phones can lead to ongoing power struggles hindering relationships



**MS. "SMITH" Looking  
at you on your phone.**

## Thank you note:

"Thank you for always  
being there for me...."

"Even when I was crying  
when I had my phone  
taken from me."

# Common Sense Media



Suggests that teens age  
13 - 18 spend 9 hours a  
day on screens

*(not including purposeful, mindful,  
educational school based activities)*

299



# Key Points From Capitol Hill Testimony



*It's not about what you like or not. It's about what everyone likes.*

## Facebook whistleblower's testimony states:

Haugen urged lawmakers to examine the algorithms that drive popular features, like the main feeds in Facebook and Instagram.

The algorithms **reward engagement**. In other words, when a post receives comments, "likes" and other interactions, it is spread more widely and is featured more prominently in feeds, instead of just featuring posts in chronological order. The **engagement-based formula helps sensational content, such as posts that feature rage, hate or misinformation**, travel far and wide, she said.

"It is causing teenagers to be exposed to more anorexia content. It is pulling families apart. And in places like Ethiopia, it's literally fanning ethnic violence," Haugen told lawmakers. She added that reforms should make "the platforms themselves safer, less twitchy, less reactive, less viral."<sup>300</sup>

# Aligning Research to the Why

## Twenge's Research Tells Us:

- The more social media use, the more likely to be depressed.
- Kids and teens have the strongest link to depression.
- The apps algorithms are designed to pull you in for more time and gives a false sense of successful multitasking.
- Many are advocating for minimum age to increase for social media. It currently sits at 13 although there is little to no ways to monitor.

301



# Disembodiment

How was my sleep?

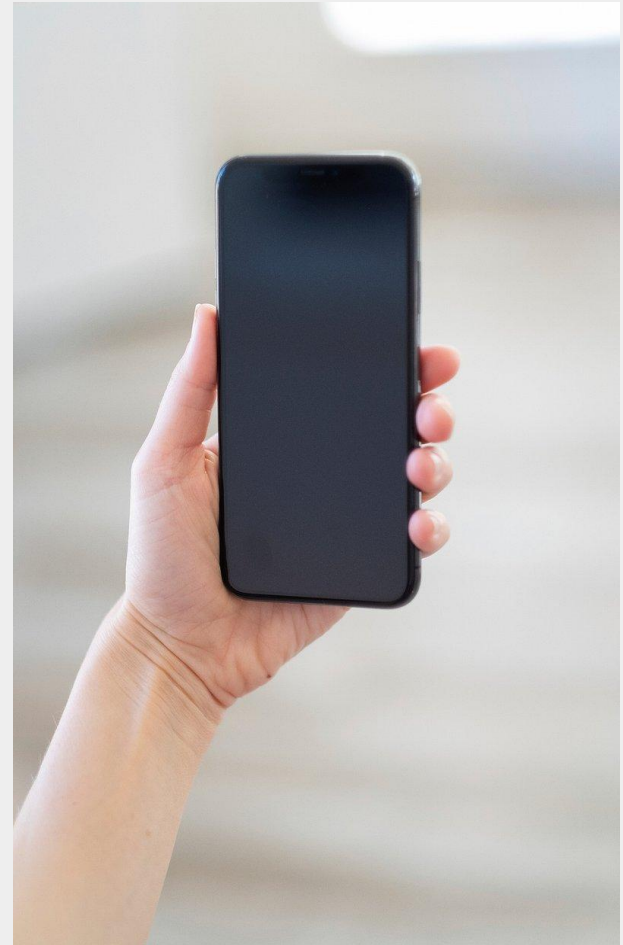
Where should I go?

What should I do?

How do I feel?

# Who am I?

302



Dodgen-Magee, 2018

# Phone Ban!?...What about an emergency?

- In the event of a school based emergency, having the full attention of students for instructions is extremely important. Distracted students are not a good outcome
- Too many phone calls and texts at one time can jam up the system for first responders to be able to communicate
- Using social media during a crisis can inform those trying to create fear or danger
- Students have access to email to communicate with family

303



**This is not a punishment  
This is not a judgement  
This is a gift**

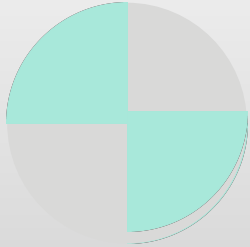


## **Community Agreement**

We will agree to be fully present and push pause on our digital lives during every school day

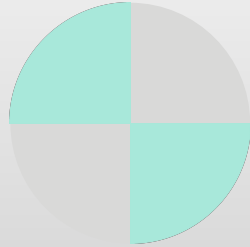
Step away from distraction and isolation.  
Step towards interaction and connection.

# What Information Have We Gathered?



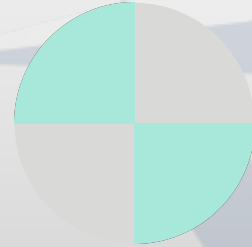
## RFP

Request for Procurement:  
What tools are out there?  
YONDR pouches aligned to Core Values



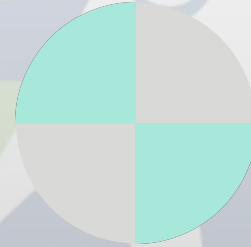
## Adult Survey

863 responses  
297 staff + 566 Guardians/Community Members



## Conversations

8 Community Events  
9 School Staffs  
Students having <sup>305</sup> many classroom conversations



## Student Surveys

805 responses

# Initial Feedback From 805 HS Student Responses

86

Reasons for in class use  
52% - Text Friends  
67% Text family  
31% Social Media  
16% Play Games

85

Frequency of using phone during class (non-academic)  
20% Every day  
25% often 4-5 times a week  
40% occasionally 1-2 times a week

36

Negatively impacted by other students using their phones in class

Impact

23% Friendships  
49% Grades  
19% Attendance  
24% Family  
47% Mental Health



# Problem of Practice

Our relationship to technology and our usage is leading to further isolation and depression while hindering our engagement with the world around us.

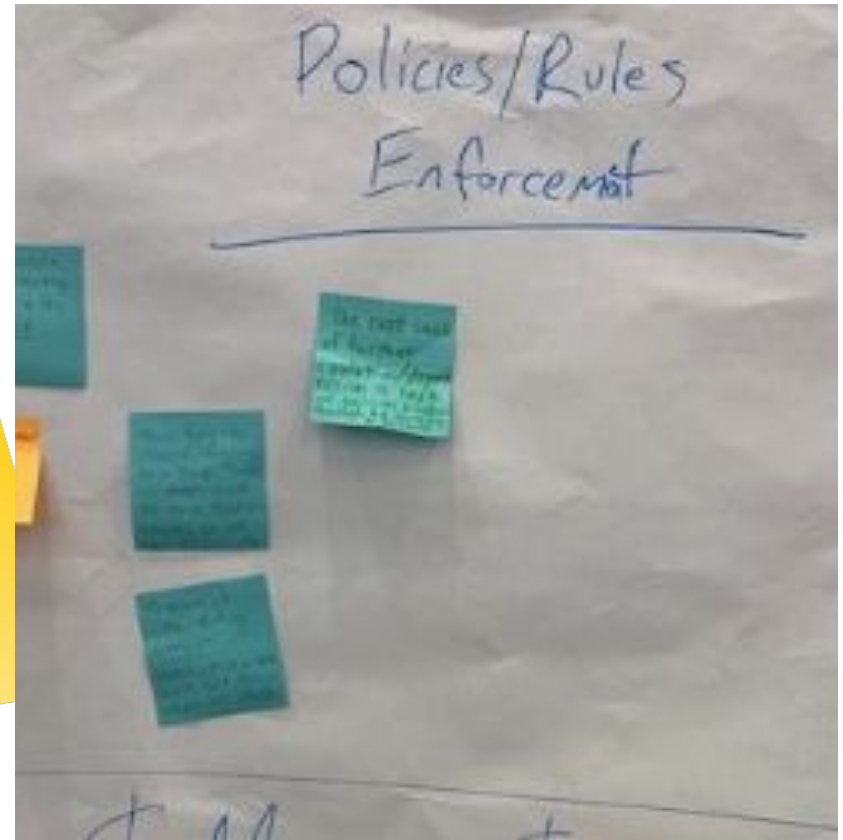
*Impossible to consistently enforce. It's a flood*

*This has to come from the top.*

*Lack of clear policies or consistent enforcement*

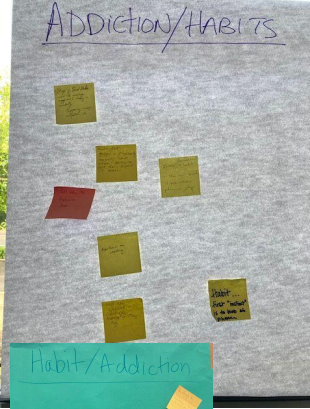
*Lack of policy and follow through from schools*

*Treat it like any other addiction. We don't let them vape in class.*

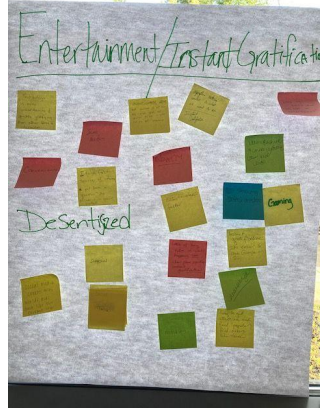


# Root Causes

Addiction/Habits



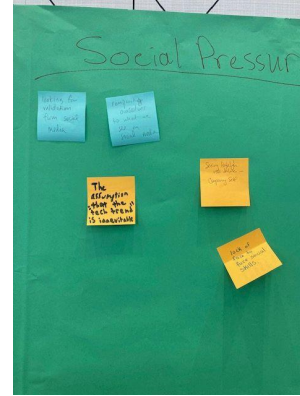
Instant Gratification



Outside Influence



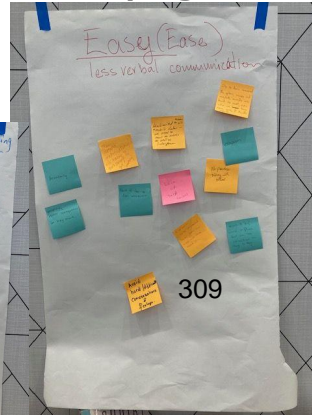
Social Pressure



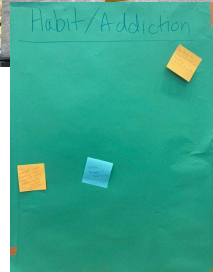
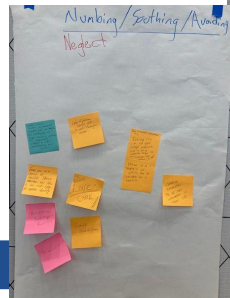
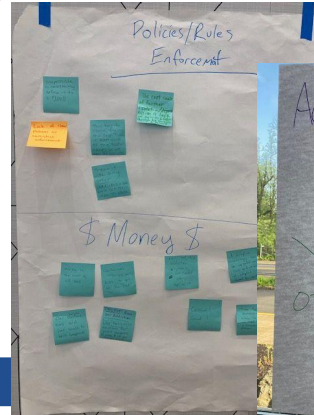
Lack of Community



Ease/Coping/Numbing



No Clear Policies/Accountability



Root Causes	Will YONDR HELP?
Addiction/Habits	★
Social Pressure	★
Instant Gratification	★
Clear Policy Enforcement	★
Outside Influences	?
Lack of Community	?
Ease/Coping/Numbing	★



Article

[How one Connecticut Middle School won the battle against cell phones](#)

Article: [Surgeon General issues new advisory on the effects social media has on youth](#)

Book: Devised by Doreen Dodgen Magee

Article

[Get phones out of schools now](#)



Book:

Anxious Generation by Jonathan Haidt

Article

[Mt. Scott - Lock them up, but don't take them away](#)

Article: [Social Media is hurting social emotional skills - EdWeek](#)

Documentary: Screenagers ([Find a screening here](#))

Article

[Digital Distractions in Class linked to lower academic performance](#)

Podcast: [Does Banning Phones in School Improve Student's Mental Health?](#)

Documentary: The Social Dilemma, A Netflix Documentary

# Questions?

312



# Disruptor Concept

PHONE  
USE/SOCIAL  
MEDIA

+

Character, personality and  
developmental milestones

=

Flight, Fight,  
Freeze,  
Response...

Mindlessness/  
Spinning

313

~~Commenting  
the disruptor~~



Code: **JFCEB**  
Adopted: 12/14/17  
Revised/Readopted: 1/11/18

**Personal Electronic Devices and Social Media – Student\*\***  
(Student may possess a personal electronic device with certain restrictions)

The Board supports students utilizing appropriate technology in the school environment. Acceptable student use of technology, including personal electronic devices (PED), contributes to a safe, appropriate, and focused school community.

A PED is a device that is capable of any of the following: accessing the Internet, electronically communicating, sending, receiving, storing, recording, reproducing and displaying information and data.

Student possession or use of PEDs may be permitted on district property, in district facilities during the school day (including district-provided transportation), and while the student is in attendance at district-sponsored activities. Possession or use of PEDs are subject to the limitations set forth in this policy and consistent with any additional school rules as may be established by the principal and approved by the superintendent's designee. Without approval, PEDs shall be turned off during instructional/class time, or at any other time where such use of the device would cause a disruption of the school environment.

Devices that have the capability to take photographs or record video or audio shall not be used for such purposes while on district property or while a student is engaged in district-sponsored activities unless expressly authorized in advance by the principal or designee. Unauthorized publishing of photographs, audio or videos taken during the school day or during school-sponsored activities is strictly prohibited.

Students are subject to disciplinary action up to and including expulsion for using a PED in any manner that is academically dishonest, threatening (as referenced in Board policy JFCM - Threats of Violence), illegal, that causes a disruption of the school environment, or violates the terms of any district policy. A referral to law enforcement officials may also be made. PEDs used in violation of this policy are subject to confiscation and will be released to the student, student's parent or property owner, as appropriate.

If the district implements a curriculum that uses technology, students may be allowed to use their own PED to access the curriculum. Students who are allowed to use their own devices to access the curriculum will be granted access to any application or electronic materials when they are available to students who do not use their own devices, or provided free of charge to students who do not use their own devices, for curriculum. A process for responding to a student's request to use a PED, including an appeal process if the request is denied, will be provided.

The district will not be responsible for loss, theft or damage to PEDs brought to district property and district-sponsored activities.

Students may only access social media if they meet the service provider's eligibility requirements and if approved by an appropriate staff member. The district will not be liable for information or comments posted by students on social media websites.

Exceptions to the provisions set forth in this policy may be made for health, safety or emergency reasons with prior principal or designee approval or when use is provided for in a student's individualized education plan (IEP) or 504 plan.

The superintendent or designee shall ensure compliance with this policy. Any subsequent school rules developed by building administrators, will be communicated to staff, students and parents through building handbooks and other means.

END OF POLICY

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**Legal Reference(s):**

[ORS 332.107](#)

[ORS 336.840](#)

Copyrights, 17 U.S.C. §§ 101-1332; 19 C.F.R. Part 133 (2006).

## **Personal Electronic Devices and Social Media – Student\*\***

Students may use and possess personal electronic devices (PEDs) on district grounds including district-approved transportation subject to the following:

1. PEDs shall be used in a manner that contributes to a safe, appropriate and focused school community. Student use must not disrupt the educational process, environment, school programs or activities, or in any manner that may violate the law, any Board policies, administrative regulation, or school rules<sup>1</sup>;
2. With the approval of the classroom teacher or a relevant staff member, students may use PEDs to access the Internet and to communicate and/or collaborate appropriately with other students and/or staff members for educational/school-related purposes. Without approval, PEDs, cell phones and other digital audio/video devices shall be turned off and stored out of plain sight during instructional/class time or at any other time where such use of the device would cause a disruption of the school environment;
3. At all times, students will be expected to exercise good judgment in their use of all Internet websites in an appropriate manner. The use of any proxy server to circumvent district security measures is strictly prohibited;
4. PEDs used in violation of law, Board policy, administrative regulation, approved school rules or that may be a disruption of the school environment may be confiscated and turned in to the school office. The PED may be returned following parent notification, conference, detention, suspension, expulsion and/or referral to law enforcement officials as appropriate;
5. Students may only access social media websites if they meet the service provider's eligibility requirements and if approved by the classroom teacher or a relevant staff member. The district will not be liable for information or comments posted by students on social media websites;
6. Devices that have the capability to take photographs or record video or audio shall not be used for such purposes while on district property or while a student is engaged in district-sponsored activities unless expressly authorized in advance by the principal or designee. Unauthorized publishing of photographs or videos taken during the school day or during school-sponsored activities, is strictly prohibited;

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<sup>1</sup>The taking, disseminating, transferring or sharing of obscene, pornographic or otherwise illegal images or photographs, whether by electronic data transfer or otherwise (commonly called texting, sexting, emailing, etc.) may constitute a crime under state and/or federal law. Any person taking, disseminating, transferring or sharing obscene, pornographic or otherwise illegal images or photographs will be reported to law enforcement and/or other appropriate state or federal agencies.

7. The district shall not be responsible for loss, theft or damage to PEDs brought to district property or district-sponsored events;
8. PEDs may be used as electronic study aids during the school day if provided as a part of a student's individualized education plan (IEP) or 504 plan or with the approval of the classroom teacher or a relevant staff member;
9. The use of PEDs in any way to send or receive messages, data or information that would pose a threat to academic integrity, contribute to or constitute academic dishonesty is strictly prohibited;
10. The use of PEDs in any manner that would violate the confidentiality or privacy rights of another individual is strictly prohibited;
11. Students shall comply with any additional school rules as established by the principal and classroom rules as approved by the principal or designee regarding the appropriate use of PEDs.

It is generally the practice of the district to provide electronic devices for students to access programs, applications, or materials used in the curriculum. A student may request permission from their teacher to use their own PED to access the curriculum. Students who are granted permission to use their own device will be provided with access to applications or electronic materials that are available to students on devices provided by the district.

If a student's request to use a PED is denied, the student may appeal in writing to the teacher. The teacher, in consultation with their supervisor, will provide a written response to the appeal.

**AUTHORIZATION TO PURCHASE K-3 DECODABLE BOOKS**

**ACTION**  
Agenda Item #7  
May 23, 2024

**SUPERINTENDENT’S RECOMMENDATION:**

Staff recommends the Board grant advanced authorization to the superintendent to enter into contracts to purchase decodable books from Benchmark Education through a cooperative contract. The amount of the purchases is not-to-exceed \$290,000.

**BUDGET IMPACT/SOURCE OF FUNDS:**

The source of the funds will be the Student Investment Account.

**BACKGROUND:**

The Student Investment Account (SIA) is the portion of money generated by the Student Success Act (SSA) that is dedicated to K-12 education. SIA distributions represent 50% of the overall collections and are distributed to school districts through a non-competitive grant process. Focus on early literacy and meeting the needs of diverse learners was a major theme of our 2024-25 Student Investment Account plan.

The Board-adopted Contracting Rules allows the Board to give advanced authority to the Superintendent to execute a particular District Contract or class of District Contracts. Textbooks and curriculum are common purchases for elementary schools. Decodable books are books that are written with a focus on a particular phonetic pattern or word family. Each decodable book is written using specific sound-letter relationships throughout the entire text. These phonics patterns on the pages of these books include word families with short vowels, long vowels, vowel teams, or irregular sounds.

As with all contracts, additional costs may be incurred for added or changed scope (e.g. change orders for unknowns, unforeseen, or agency requirements).

**PRESENTER / STAFF CONTACT:**

Ivonne Dibblee, Assistant Superintendent of Education  
Jen Burkart, Early Learning Coordinator

**AUTHORIZATION TO PURCHASE 3-5 CLASSROOM LIBRARY BOOKS**

**ACTION**  
Agenda Item #8  
May 23, 2024

**SUPERINTENDENT’S RECOMMENDATION:**

Staff recommends the Board grant advanced authorization to the superintendent to enter into contracts to purchase inclusive 3rd-5th classroom library books from Follett School Solution via a 1 Government Procurement Alliance (1GPA) cooperative contract. The amount of the purchases is not-to-exceed \$370,000.

**BUDGET IMPACT/SOURCE OF FUNDS:**

The source of the funds will be from the Early Literacy Success Grant (\$250,000) and from the Student Investment Account (\$120,000).

**BACKGROUND:**

The Early Literacy Success Grant (ELSG) is an Oregon Department of Education non-competitive grant dedicated to early literacy education. ELSG allows for a portion of the 2023-2025 budget distribution to support differentiated support for our 4th & 5th grade students. Focus on early literacy and meeting the needs of diverse learners is a major theme of our 2023-2025 approved grant proposal. Classroom library books ensure students have immediate access to high interest, culturally relevant and developmentally appropriate texts to afford a wide range of teacher-supported reading in alignment with student interests and learning goals. Classroom libraries were included and approved by our Board and ODE Early Literacy Success grant.

The Board-adopted Contracting Rules allows the Board to give advanced authority to the Superintendent to execute a particular District Contract or class of District Contracts. Classroom library books are common purchases for elementary schools.

As with all contracts, additional costs may be incurred for added or changed scope (e.g. change orders for unknowns, unforeseen, or agency requirements).

**PRESENTER / STAFF CONTACT:**

Ivonne Dibblee, Assistant Superintendent of Education  
Jen Burkart, Early Learning Coordinator

**SUPERINTENDENT CONTRACT**

**ACTION**  
Agenda Item #9  
May 23, 2024

**BOARD CHAIR’S RECOMMENDATION:**

Recommend approval of a three-year contract with Superintendent Shay James through June 30, 2027.

**ORIGINATED BY:**

The Board’s desire to enter into a three-year agreement with the Superintendent.

**BACKGROUND:**

Chair Benologa and Vice Chair Wai have worked with legal counsel to develop a three-year contract.

District policy prohibits the Board from entering into a contract with the Superintendent for more than three years at a time.

**PRESENTER:**

Jena Benologa, Board Chair