



RESOLUTION NO. 2020.09.15b
A RESOLUTION ADOPTING REVISED PUBLIC CONTRACTING RULES

WHEREAS, West Multnomah Soil and Water Conservation District (“District”) is an Oregon special district subject to Oregon’s public contracting laws [Oregon Revised Statutes (“ORS”) chapters [279A](#), [279B](#), and [279C](#)]; and

WHEREAS, pursuant to [ORS 279A.065](#) and [ORS 279A.070](#), public contracting agencies must follow the [Oregon Attorney General’s Model Public Contracting Rules](#), specifically Chapter 137, Division [46](#), [47](#), [48](#), and [49](#), except as specifically provided in the agency’s local public contracting rules; and

WHEREAS, on March 8, 2005, to comply with changes in Oregon law the District adopted Public Contracting Rules and Procedures (“2005 Contracting Rules”) as its local public contracting rules; and

WHEREAS, the 2005 Contracting Rules require updating to reflect statutory changes since 2005;

NOW, THEREFORE, the District’s Board of Directors, acting both as the governing body of the District and as the Local Contract Review Board, hereby resolves as follows:

1. The Revised Public Contracting Rules described in Exhibit A to this Resolution are hereby adopted as the District’s local public contracting rules.
2. Upon their adoption, the Revised Public Contracting Rules in Exhibit A will replace and supersede the 2005 Contracting Rules.
3. The [Oregon Attorney General’s Model Public Contracting Rules](#), specifically Chapter 137, Division [46](#), [47](#), [48](#), and [49](#), are hereby adopted except as specifically provided in Exhibit A.

APPROVED AND ADOPTED BY THE BOARD OF DIRECTORS THIS 15th DAY OF SEPTEMBER, 2020.

Terri Preeg Riggsby, Board Chair

Date

ATTEST:

Shawn Looney, Board Secretary

Date

REVISED PUBLIC CONTRACTING RULES

EXHIBIT A

(Adopted September 15, 2020)

A. Personal Services.

- 1) **Definition.** “Personal Services” include those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: Architect, engineer; surveyor; photogrammetrist; attorney; accountant; auditor; computer programmer; artist; designer; performer; consultant; outreach educator, and workshop facilitator. The District Manager shall have the authority to determine whether a particular service is a “Personal Service” under this definition.
- 2) **Contracts for Personal Services Other than Architectural, Engineering, Surveying, and Photogrammetry Services and Related Services.**
 - a) A personal services contract totaling less than \$100,000 in either a calendar year or a fiscal year may be awarded by direct appointment, without competitive bidding.
 - b) A personal services contract totaling between \$100,000 and \$250,000 in the aggregate may be awarded after obtaining at least three informal quotes, according to the procedures for Intermediate Procurement described in [ORS 279B.070](#).
 - c) A personal services contract totaling more than \$250,000 in the aggregate shall be awarded using competitive sealed proposals as provided in [ORS 279B.060](#), unless exempted from competitive bidding by resolution of the Local Contract Review Board according to the requirements of [ORS 279B.085](#).
 - d) Personal service contracts exempted from competitive proposal processes may be awarded in any manner authorized by the Local Contract Review Board.
 - e) The above procedures do not apply to contracts with architects, engineers, land surveyors, or photogrammetrists.
- 3) **Contracts with Architects, Engineers, Land Surveyors, and Photogrammetrists.**
 - a) A contract for architectural, engineering, surveying, and photogrammetry services may be entered into by direct appointment if the cost of such services for the project will not exceed \$100,000; or in an emergency; or if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.
 - b) Unless otherwise provided in this Section, contracts for architectural, engineering, surveying and photogrammetry services shall be awarded according to the procedures for competitive proposals described in [ORS 279B.060](#) and these rules.
 - c) All contracts for architectural, engineering, surveying, and related service shall be entered into consistent with [ORS 279C.110](#), which substantially provides as follows:
 1. The District shall select consultants to provide architectural, engineering, photogrammetric mapping, or land surveying services on the basis of the

consultant's qualifications for the type of professional service required.

2. The District may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only as provided in [ORS 279C.110\(5\)](#).
3. The District's screening and selection procedures under this section, regardless of the estimated cost of the services for a project, may include considering each candidate's:
 - (a) Specialized experience, capabilities and technical competence, which the candidate may demonstrate with the candidate's proposed approach and methodology to meet the project requirements;
 - (b) Resources committed to perform the work and the proportion of the time that the candidate's staff would spend on the project, including time for specialized services, within the applicable time limits;
 - (c) Record of 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) Ownership status and employment practices regarding historically marginalized individuals and communities including, but not limited to, minorities and women, as well as emerging small businesses or historically underutilized businesses;
 - (e) Availability to the project locale;
 - (f) Familiarity with the project locale; and
 - (g) Proposed project management techniques.
4. If, after following screening and selection procedures, the District determines that two or more candidates are equally qualified, the District may select a candidate through any process that is not based on the candidate's pricing policies, proposals or other pricing information.

B. Delegation.

- 1) The powers and duties assigned to the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the Board of Directors and may not be delegated. The authorities granted to the Board of Directors may be delegated as provided in this section B.
- 2) The District Manager or their designee shall have the authority to approve any non-emergency public contract of \$100,000 or less. The District's Board of Directors shall approve any contract exceeding this amount.
- 3) Emergency contracts may be awarded as provided in section G of these Rules.

C. Special Procurements and Exemptions.

- 1) The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in [ORS 279B.085](#).
- 2) The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in [ORS 279C.335](#). When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in [Oregon Administrative Rules \(OAR\) 137-049-0640 through 137-049-0690](#).

D. Small Procurements (Under \$10,000).

- 1) Contracts for purchases of goods and non-personal services under \$10,000, and contracts for public improvements under \$5,000, are not subject to competitive bidding requirements. The District Manager or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District.
- 2) The District may amend a public contract awarded as a small procurement beyond the limits provided in accordance with [OAR 137-047-0800](#), provided the cumulative amendments do not increase the total contract price to a sum that is greater than twenty-five percent (25%) of the original contract price.

E. Intermediate Procurements.

A contract for procurement of goods and non-personal services estimated to cost between \$10,000 and \$150,000 in a calendar year, or a contract for a public improvement that is estimated to cost between \$5,000 and \$100,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in [ORS 279B.070](#).

F. Methods for Awarding Contracts Using Requests for Proposal Process.

In making an award using the request for proposal process in [ORS 279B.060](#), the District may use any evaluation method determined to be most appropriate for the selection process, including, but not limited to, the processes described in [ORS 279B.060\(6\)\(b\)](#), as well as direct appointment of personal services contracts if direct appointment is determined to be most advantageous to the District. The evaluation process(es) to be used shall be stated in the Request for Proposals. [OAR 137-047-0261](#) shall apply to evaluation of proposals.

G. Emergency Contracts.

- 1) “Emergency” shall be defined as follows: “Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.”
- 2) The Board Chair, the District Manager, or a designee of the Board of Directors shall have authority to determine when emergency conditions exist sufficient to warrant an emergency contract and shall so declare in writing. The nature of the emergency and the method used for the selection of the contractor shall be documented for the District’s records.
- 3) The Board Chair, the District Manager, or a designee of the Board of Directors may approve an emergency contract of any amount, subject to the requirements of this section G. The individual approving the contract award shall promote competition in the award of public contracts to the extent feasible under the circumstances.

H. Disposal of Surplus Property.

- 1) “Surplus Property” is any personal property of the District that has been determined by the District Manager or designee as being of no use or value to the District.
- 2) The District Manager or designee may dispose of surplus property in the manner that is, at the discretion of the District Manager, deemed most advantageous to the District or the community at large.

I. Appeals of Prequalification Decisions and Debarment Decisions.

- 1) The Local Contract Review Board shall hear appeals of prequalification and debarment decisions as provided in [ORS 279B.425](#). The following additional procedures shall apply to hearings on such decisions:
 - a) Notices shall be submitted in writing to the District Manager. Appeals filed after the filing period stated in [ORS 279B.425](#) shall not be heard.
 - b) Upon opening of the hearing, District staff shall explain the District’s decision being appealed and the justification thereof. The appellant shall then be heard. Time for the appellant’s testimony shall be established by the Board Chair. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board Chair.
 - c) Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District’s decision shall be provided time to be heard, with time limits established by the Board Chair. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board Chair shall close the hearing.
 - d) When issued in writing according to the requirements of [ORS 279B.425](#), the Local Contract Review Board’s decision and order shall be final.

J. Purchases from Federal Catalogues.

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