

**Benton Soil and Water Conservation District
RESOLUTION FY2020-2021-06**

A RESOLUTION UPDATING PUBLIC CONTRACTING RULES AND PROCEDURES

WHEREAS, Benton Soil and Water Conservation District ("District") is an Oregon special district which is subject to Oregon's public contracting laws,

NOW, THEREFORE, BE IT RESOLVED:

That the District adopts the updated public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference.

APPROVED AND ADOPTED by Benton SWCD Board of Directors on November 2, 2020.

Faye Yoshihara
Faye Yoshihara (Nov 2, 2020 20:20 PST)

Faye Yoshihara, Benton SWCD Board Chair

EXHIBIT A

PUBLIC CONTRACTING RULES AND PROCEDURES

A. Personal Services.

- 1) **Definition.** "Personal Services" shall be defined to 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 include a project manager who qualifies as an independent contractor under applicable tax laws.
- 2) **Contracts for Personal Services Other than Architectural, Engineering and Surveying Services and Related Services.**
 - a. A personal services contract totaling less than \$50,000 in either a calendar year or a fiscal year may be awarded by direct appointment, without three informal quotes or competitive bidding.

- b. A personal services contract totaling between \$50,000 and \$150,000 in either a calendar year or a fiscal year 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 \$150,000 in either a calendar year or a fiscal year 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. Personal services contracts under this section existing on the effective date of these Rules may be extended by direct appointment, without competitive bidding.

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 such contract is estimated not to exceed \$50,000 in a calendar year or a fiscal year, 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 procedure for competitive proposals described in ORS 279B.060 and these rules.
- c. All contracts for architectural, engineering, surveying, photogrammetry and related services shall be entered into consistent with the qualification-based selection processes in ORS 279C.110.

B. Delegation.

- 1) The powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the Board of Directors.
- 2) Unless expressly limited by the Local Contract Review Board or these Rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the Executive Director

or designee without further approval of the District's Board of Directors, including the authority to enter into emergency contracts pursuant to ORS 279B.080.

- 3) The Executive Director or designee shall have the authority to approve any public contract up to \$50,000. Board approval will be required for public contracts over this amount.

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 the Model Rules.

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

- 1) Small procurement contracts under \$10,000 are not subject to competitive bidding requirements. The Executive Director 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 \$10,000 limit 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 one hundred twenty-five percent (125%) of the original contract price.

E. Intermediate Procurements.

- 1) A contract for procurement of goods and 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 \$10,000 and \$100,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.
- 2) The District may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that exceeds \$150,000 or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

F. Contractor Certified Policy and Practice Against Sexual Harassment

- 1) Prior to entering into any contract with an anticipated price of \$150,000 or more, the District's Board of Directors must verify that the prospective contractor has certified in a signed writing that they have a written policy and practice preventing sexual harassment, sexual assault and discrimination against employees who are part of a protected class.
- 2) The prospective contractor's policy and practice must meet the minimum requirements set forth in ORS 279A.112(2)(b).
- 3) Every contract under this subsection must include, as a material term of the contract, a statement that the contractor has certified that they have a written policy and practice that meets the minimum requirements of ORS 279A.112(2) and that they will maintain that policy and practice during the entire term of the contract.
- 4) Certification will not be required if:
 - a. The procurement was conducted under ORS 279B.075, 279B.080 or 279B.085; or
 - b. Only one prospective contractor submitted a bid or proposal in response to the solicitation.

G. Methods for Awarding Contracts Using Request for Proposal Process.

- 1) 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(8), 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.

H. 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 Executive Director, or a designee of the Executive Director shall have authority to determine when emergency conditions exist

sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor shall be documented.

3) Emergency contracts may be awarded as follows:

- a. **Goods and Services.** Emergency contracts for procurement of goods and services may be awarded pursuant to ORS 279B.080 and section B, "Delegation," of these Rules.
- b. **Public Improvements.** The District hereby adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.

I. Disposal of Surplus Property

- 1) "Surplus Property" is defined as any personal property of the District that has been determined by the Executive Director or designee as being of no use or value to the District.
- 2) The Executive Director or designee may dispose of surplus property as in the manner that is, in the discretion of the Executive Director, deemed most advantageous to the District or the community at large.
- 3) Disposal of surplus items valued at greater than \$500.00 shall be approved by the Board of Directors.

J. Appeals of Prequalification Decisions and Debarment Decisions.

- 1) Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply to hearings on such decisions by the LCRB as provided in LCRB Resolution No. 2012-3.
 - a. Notices shall be submitted in writing to the Executive Director. Appeals filed after three (3) business days 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 LCRB's decision and order shall be final.

K. Purchases from Federal Catalogues.

- 1) By LCRB Resolution No. 2012-03, the LCRB has adopted the following rules for procurement of goods through federal programs:

Subject to applicable Board approval requirements stated in the District's Contracting Rules, the District may purchase goods through federal programs without competitive bidding when the procurement is pursuant to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). 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.

L. Public Improvement Contracts.

- 1) Subject to the applicable provisions of these Rules, public improvement (construction) contracts shall be entered into as provided in ORS chapter 279C and applicable Oregon Administrative Rules.






Public Contracting Rules and Procedures updated Nov 2 2020

Final Audit Report

2020-11-03

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