

**PORTLAND DEVELOPMENT COMMISSION**  
Portland, Oregon

**ACTING IN ITS CAPACITY AS LOCAL CONTRACT  
REVIEW BOARD**

**RESOLUTION NO. 6904**

**ADOPT REVISED LOCAL CONTRACT REVIEW  
BOARD ADMINISTRATIVE RULES**

**WHEREAS**, Resolution No. 3550 designated the governing body of the Portland Development Commission (the "Commission") as the Local Contract Review Board for the Commission pursuant to state law;

**WHEREAS**, the Local Contract Review Board has adopted Local Contract Review Board Administrative Rules (the "Rules") to govern the Commission's procurement and public contracting and amended those Rules most recently on May 26, 2010, by Resolution No. 6801; and

**WHEREAS**, modifications to the Rules are necessary to (1) update the Rules due to changes to ORS Chapters 279A, 279B, and 279C; (2) provide clarity by rewording some provisions; and (3) make certain changes to bring the Rules in line with current preferred practices.

**NOW, THEREFORE, BE IT RESOLVED** that that the Local Contract Review Board hereby adopts the Local Contract Review Board Administrative Rules, attached hereto as Exhibit A, replacing any prior versions of these rules; and

**BE IT FURTHER RESOLVED** that that this resolution shall become effective immediately upon its adoption.

**Adopted by the Portland Development Commission August 24, 2011.**

  
Recording Secretary

# PDC

PORTLAND DEVELOPMENT COMMISSION

## Resolution Number 6904

Title:

ADOPT REVISED LOCAL CONTRACT REVIEW BOARD  
ADMINISTRATIVE RULES

Adopted by the Portland Development Commission on August 24, 2011

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Scott Andrews	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Aneshka Dickson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner John Mohlis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner Steven Straus	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Charles Wilhoite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

### Certification

The undersigned hereby certifies that:

*The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Portland Development Commission and duly recorded in the official minutes of the meeting.*

  
\_\_\_\_\_  
Recording Secretary

Date: August 24, 2011

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## **Part 1: Generally Applicable Rules:**

### **I. SCOPE**

- A. Authority.** Pursuant to ORS 279A.065, 279A.070 and Commission Resolution No. 3550, adopted April 8, 1987, the Portland Development Commission Board of Commissioners is installed as a Local Contract Review Board. The Board adopts the Portland Development Commission Local Contract Review Board Rules (“LCRBs”) and their amendments to establish contracting procedures for the Portland Development Commission.
- B. Attorney General’s Model Public Contract Rules Inapplicable.** The model rules adopted by the Oregon Attorney General do not apply to the Commission except for those model rules that are specifically referenced and adopted in the body of these Rules but may be used as supplemental rules if needed to address circumstances not provided for by these Rules.
- C. Federal Requirements.** The Commission may be subject to certain contracting requirements when a particular contract is financed in part or wholly with federal funds. Those requirements are not reiterated in these Rules. A conflict between these Rules and a federal requirement will be resolved in favor of the federal requirement.
- D. Adoption and Amendment Procedures.** The Board will adopt any amendments to these Rules by resolution of the Board following a hearing at which members of the public have the opportunity to appear and submit comments.
- E. Review of Rules.** The Executive Director will designate appropriate staff to review and promulgate necessary changes to the rules following each Oregon state legislative session pursuant to Part 1, Section VI, Subsection B, Item 4 below.
- F. Interpretation; Definitions.** These Rules are intended to comply with and fully implement all provisions and authority granted to local contracting agencies under the Public Contracting Code and shall be interpreted broadly, in favor of the Commission’s contracting powers. All capitalized terms in the Rules are defined within and shall be given the meanings set forth in Part 1 Section II, Definitions.

### **II. DEFINITIONS**

- A. Addendum or Addenda:** A written document issued by the Commission to add, modify or delete, make a material change in, or to provide a general explanation of the Solicitation Document.
- B. Alternative Contracting Methods:** A method of constructing a public improvement, for which price is not the only relevant criterion in the selection of an otherwise qualified general Contractor including, but not limited to the Design/Build method and the CM/GC method of a Public Improvement Contract.

- C. Amendment:** A written document to modify or change a Contract and executed by all parties to the Contract.
- D. Bid:** A binding written offer to provide Goods and Services or to construct a Public Improvement as described in a Solicitation Document, based on a stipulated lump sum, alternate items and/or unit prices.
- E. Bidder:** An entity that submits a Bid in response to Solicitation or an Invitation to Bid.
- F. Bid Documents:** The Solicitation Documents that set forth requirements for submitting a Bid.
- G. Board:** The Portland Development Commission Board of Commissioners acting as the Local Contract Review Board.
- H. Change Order:** A written statement signed by the Commission and the Contractor prior to the Contractor's performance of certain Work, stating their agreement upon all or part of the following, subject to particular terms and conditions of the Contract: (a) a described change in the Work, if any; (b) the amount of the total adjustment in the original Contract Price, if any; (c) the extent of the total adjustment in the Work performance period; and (d) any changes to the drawings and technical specifications, or other changes to the Contract , if any.
- I. Closing:** The date and time after which Bids, Proposals, Statements of Qualifications or other Solicitation Responses will not be received. The Closing date and time shall be specified in the Solicitation Documents.
- J. Commission:** The Portland Development Commission, the duly designated urban renewal agency of the City of Portland, a political subdivision of the State of Oregon.
- K. Conditionally Responsible Bidder List:** A list of Bidders or Proposers, established by the Purchasing Manager based on written documentation, whose prior work for the Commission exhibited one or more of the following deficiencies: any lack of performance, unsatisfactory performance, or deficient or unsatisfactory work; failure to meet schedule; failure to promptly pay subcontractors or suppliers; excessive Change Order work; nonresponsiveness; or any type of non-compliance with Contract terms and conditions. This list may be used in determining responsibility of any Bidder, Proposer, or Offeror submitting a Bid, Proposal, or Offer to the Commission and may be the basis of non-selection for Contract Award.
- L. Construction Change Field Directive:** A written order given by the Commission to a Contractor directing a change in the Work or performance

period and stating a proposed adjustment or methodology in adjustment to the Contract.

- M. Construction Manager/General Contractor (or CM/GC):** A Public Improvement Contract in which the general Contractor, among other things, undertakes design phase involvement and constructability reviews, performs value engineering, schedules estimating and subcontracting services, establishes a guaranteed maximum price to complete the Contract Work, acts as general Contractor coordinates and manages the building process provides general Contractor expertise, and acts as a member of the project team along with the Commission, architect/engineers and other consultants.
- N. Contract:** The written agreement that sets forth rights and obligations of the parties with respect to a particular transaction, including, but not limited to all general and special conditions, drawings, specifications, price terms and legal requirements.
- O. Contract Award:** The decision of PDC to enter into a Contract with an Offeror or Bidder.
- P. Contract Price:** The total amount paid or to be paid under a Contract including any approved Bid alternates, unit Bid prices, fully executed Change Orders, Contract Amendments and/or any, Construction Change Field Directives.
- Q. Contractor:** The Entity awarded a Contract.
- R. Days:** Calendar days unless otherwise specified by these Rules.
- S. Debarment:** Debarment from consideration for Commission Contract Awards pursuant to ORS 279B.130 and these Rules.
- T. Design-Build Contract:** A Public Improvement Contract in which the general Contractor also provides or obtains specified design services, participates on the project team with the Commission, and manages both design and construction. In this form of Contract, single entities provide the Commission with all of the services necessary to both design and construct the project.
- U. Developer Services Agreement:** An agreement with a developer to provide predevelopment services which may include, without limitation, the selection and delivery of design, engineering and construction services for a redevelopment project pursuant to ORS Chapter 457.
- V. Disqualification:** Disqualification from consideration for Commission Contract Awards pursuant to ORS 279C.440, 279C.445 and 279C.450 and these Rules.
- W. Electronic Advertisement:** The advertisement for Offers available over the internet via the World Wide Web.

- X. Electronic Bid:** A Procurement method that allows a Bidder to access Bid Documents, submit Offers and conduct other activities related to the Procurement process through the internet or other remote access.
- Y. Emergency:** Circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.
- Z. Entity:** A natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.
- AA. Executive Director:** The Executive Director of the Commission and his or her designees.
- BB. Findings:** Justification for the Board or Executive Director's conclusion that may include, but is not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; value engineering; specialized expertise needed; public safety; market conditions; technical complexity; and funding sources.
- CC. Flexible Services Contract:** A Contract for services, including Personal Services Contract that has repetitive requirements on an as-needed basis.
- DD. Formal Procurement:** Any procurement for Goods or Services exceeding \$100,000 awarded in accordance with Formal Procurement procedures.
- EE. Goods:** Any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.
- FF. Hard Copy:** A document in paper form.
- GG. Independent Contractor:** An Independent Contractor is a person who: (a) is free from direction and control over the means and manner of providing the services, subject only to the person for whom the services are provided to specify the desired results; (b) is customarily engaged in an independently established business; and (c) is responsible for obtaining all licenses or certificates necessary to provide the services.
- HH. Intermediate Procurement:** Any procurement for goods or services exceeding \$5,000 but not exceeding \$100,000 awarded in accordance with Intermediate Procurement procedures.



- II. Invitation to Bid or ITB:** Solicitation Document inviting a formal competitive sealed Bid which may result in award of one or more Contracts.
- JJ. Notice:** Any notice that is required to be given by these Rules shall be in writing and delivered to an Offeror by first-class mail, facsimile or email. Any such notice shall be deemed to have been given on the date sent via facsimile to the facsimile number provided to the Commission within an Offer. If no facsimile number is provided to the Commission, notice shall be deemed given on the date it is sent via first-class mail and properly posted.
- KK. Offer:** A Bid, Proposal, or Quotation, as applicable.
- LL. Offeror:** An Entity that offers to enter into a Contract by submitting a Bid, Quote or Proposal to the Commission.
- MM. Personal Services Contract:** A Contract for specialized skills, knowledge or unique resources in the application of highly-technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment. Such services include, but are not limited to, the services of architects, engineers, surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. When it is not clear if the required service qualifies as a Personal Service as outlined in this paragraph, the Purchasing Manager shall have the authority to make the final determination.
- NN. Price Agreement:** A public Contract for the procurement of Goods or Services at a set price with no guarantee of a minimum or maximum purchase; or an initial order or minimum purchase combined with a continuing Contractor obligation to provide Goods or Services in which the contracting agency does not guarantee a minimum or maximum additional purchase.
- OO. Procurement:** The act of purchasing, leasing, renting or otherwise acquiring goods, services or personal services including each function and procedure undertaken or required to be undertaken by Commission to enter into a Contract, administer a Contract and obtain performance of a Contract under these rules.
- PP. Proposal:** A competitive Offer, binding on the Proposer and submitted in response to a written Request For Proposals or Request For Qualifications.
- QQ. Proposer:** An entity that submits a Proposal in response to a Request For Proposal or Request for Qualification.
- RR. Public Contract:** Any agreement for the sale or other disposal, or a purchase, lease, rental or other acquisition, by the Commission of personal property, Services, including Personal Services, Public Improvements, Public Works, minor

alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement and which is not exempt from the application of these Rules.

- SS. Public Contracting Code:** The provisions of ORS Chapters 279, 279A, 279B, and 279C and referenced statutory requirements therein.
- TT. Public Improvement Contract:** A Contract for construction, reconstruction or major renovation on real property by or for the Commission, but does not include Emergency Work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement, or Contracts for which no funds of the Commission are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection.
- UU. Public Notice:** A public notice is a written communication intended to advertise contract opportunities and other Commission actions related to the exercise of these Rules. A Public Notice must be published at least once in at least one newspaper of general circulation in the local area and in as many additional publications as the Commission may determine appropriate. In lieu of print publications, the Purchasing Manager may determine that it is more practical and cost effective to publish a Public Notice on the PDC website.
- VV. Public Works Contract:** A Contract, for but not limited to the construction of roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest but does not include the construction or reconstruction or renovation of privately owned property which is leased by a public agency.
- WW. Purchasing Manager:** The Professional Services Manager or other designee of the Executive Director granted the authority to implement these Rules.
- XX. Quotation or Quote:** A price or Proposal offered in response to small or intermediate oral or written Solicitation by the Commission for the award of a Contract that is not publicly advertised.
- YY. Release Date:** The date upon which Solicitation Documents are first available to potential Offerors/Bidders.
- ZZ. Request For Proposal (RFP):** A Solicitation inviting Proposals from Offerors.
- AAA. Request for Information or Request for Interest (RFI):** A written request for submission of information or interest. A RFI may be used as a preliminary document to obtain information useful in preparation of a Request for Proposal.
- BBB. Request for Qualification (RFQ):** A written request for submission of a statement of qualifications. An RFQ may be used as a preliminary document to obtain information useful in the preparation of a Request for Proposal and may

also be used as a Solicitation for services that will be the subject of a Flexible Service Contract. If an RFQ is used as the Solicitation method for which a Flexible Service Contract will be utilized, it shall include all of the provisions that would otherwise be included within the applicable Solicitation.

**CCC. Resident Bidder:** A Bidder that has paid unemployment taxes or income taxes in Oregon during the twelve (12) calendar months immediately preceding submission of the Bid, has a business address in Oregon, and has stated in the Bid whether the Bidder is a Resident Bidder under ORS 279A.120.

**DDD. Responsible Bidder, Proposer or Offeror:** A Bidder, Proposer or Offeror who has not been debarred or disqualified by the Commission, has made a Responsive Offer and meets the Standard of Responsibility as described in Part 2, Section II.BB.5. Additionally, if the Contract is for a public improvement, a Bidder, Proposer or Offeror shall not be on the list created by Construction Contractors Board under ORS 701.227 or on the Federal Debarred list, if applicable.

**EEE. Responsive Offer:** An Offer, (also Bid or Proposal) that conforms in all material respects with the procedures and requirements of the Solicitation Documents and all requirements of the Public Contracting Code and these Rules.

**FFF. Rules:** The rules of the Local Contract Review Board of the Portland Development Commission.

**GGG. Services:** All labor and services other than Personal Services (including construction and trade services).

**HHH. Small Procurement:** Any procurement of goods or services not exceeding \$5,000 that may be awarded in any manner deemed practical or convenient.

**III. Sole Source Contract:** A Contract between the Commission and a sole vendor of Goods or Services or public improvements, as applicable.

**JJJ. Solicitation:** Any oral or written invitation to one or more potential Contractor(s) to submit a Bid, Proposal, Quote, Statement of Qualifications or letter of interest to the Commission with respect to a proposed project, procurement or other contracting opportunity. The word “Solicitation” also refers to the process by which the Commission requests, receives and evaluates potential Contractors and awards Contracts that are subject to these Rules.

**KKK. Solicitation Documents:** All written materials issued by the Commission for a Solicitation, including, but not limited to advertisements, instructions to Bidders or Proposers, Addenda, the Contract terms, Invitations to Bid, Request For Proposals, Requests for Quotations and includes all documents incorporated by reference.

**LLL. Special Procurement:** Any class Special Procurement or Contract specific Special Procurement for the purpose of entering into a series of Contracts over time or on a one time basis for the acquisition of a specified class of goods or services, as further described in ORS 279B.085.

**MMM. Standards of Responsibility:** The standards set forth in Part 2, Section II.BB.5.

**NNN. Statement of Work:** All provisions of a Public Contract that specifically describe the Work to be performed or services to be provided by either the Contractor, subcontractor, or Commission as may be applicable to include any related deliverables, drawings, technical specifications or deadlines.

**OOO. Surplus Personal Property:** For the purposes of these Rules, personal property that is deemed surplus, obsolete or no longer needed by the Commission.

**PPP. Technical Assistance Agreement:** An agreement to provide technical assistance. The services provided under this agreement shall be determined to be unique in nature not normally supported by a competitive market with a community or business assistance component.

**QQQ. Work:** Furnishing all materials, labor, equipment, services, subcontracts and/or incidentals according to the Statement of Work and Solicitation Documents necessary to successfully complete or carry out all the duties and obligations as set forth in the Contract.

**RRR. Work Order:** A written document that authorizes a purchase from an operative Contract.

### III. EXEMPTIONS

**A. Competitive Solicitation General Rule.** All public Contracts shall be based upon competitive Bids or Proposal to foster competition except for Contracts exempt pursuant to ORS279A.025 or otherwise exempted under these Rules.

**B. Exempt Classes.** The following Contracts are exempt from competitive bidding:

1. Contracts made with other public agencies or the federal government;
2. Contracts made with a qualified nonprofit agency providing employment opportunities for individuals with disabilities, as described in ORS 279.835 to 279.855;
3. Personal Services Contracts (see Part 3);
4. Insurance and employee benefits Contracts;

5. Contracts for price regulated items, utilities, telecommunication and other like services;
6. Contracts for copyrighted materials;
7. Advertising Contracts;
8. Investment Contracts;
9. Sale of used personal property;
10. Contract Amendments, Change Orders and/or Construction Change Field Directives;
11. Sole Source Contracts (see Part 1);
12. Acquisition or disposition of real property or interest in real property;
13. Surplus Personal Property;
14. Contracts for maintenance and support services from the manufacturer of software licensed to the Commission; licensing of additional modules or additional software components related to software already in use at the Commission;
15. Contract renewals (see Part 1 or Part 3);
16. Contracts for arts and entertainment, including Contracts for any theatrical or musical performance or for the production of a Work of art, music or literature.
17. Contracts for professional or expert witnesses or consultants to provide services to existing or potential litigation;
18. Emergency Contracts (see Part 1 or Part 3)
19. Contracts, agreements or other documents entered into, issued or established in connection with incurring debt of a public body, making of program loans or investment of funds by a public body;
20. Grants;
21. Contracts for Outside Legal Counsel;
22. Food and food-related products;
23. Hotel and other sites for large conferences and workshops;

- 24. Dues, registrations and membership fees; and
- 25. Staff parking and parking validation.

**C. Exemption Procedures.**

1. **Board Exemptions.** The Board may order a particular Contract or a class of Contracts exempt from competitive solicitation requirements where such Contract or Contracts are not otherwise exempted by these Rules. A request for an exemption shall contain the following:
  - a. The nature of the project or type of procurement;
  - b. Estimated cost of the project or anticipated value of procurement;
  - c. Findings to support the substantial cost savings anticipated by the exemption from competitive solicitation;
  - d. Findings to support the reason that an exemption would be unlikely to encourage favoritism or diminish competition for the public Contract;
  - e. Proposed Alternative Contracting Methods to be employed if any; and
  - f. The estimated date by which it would be necessary to award the Contract(s).
  - g. In making a determination regarding an exemption, the Board may consider the type, cost, amount of the contract, number of persons available to Bid, and such other factors as it may deem appropriate. See Part 4, Section II, Subsection B, Item 2 for public hearing requirements related to Public Improvement Contracts. The Board may also waive all or a portion of the requirements for furnishing a performance bond and payment bond and excuse bid security.
2. **Executive Director Exemptions.** The Executive Director may order a particular Contract that does not exceed the Executive Director's delegated expenditure authority exempt from competitive solicitation requirements where such Contract or Contracts are not otherwise exempted by these Rules. A request for an exemption should contain the same information set forth at Part 1, Section III, Subsection C., Items 1(a) through 1(f). See Part 4, Section II, Subsection B, Subsection 2 for exemption limits and public hearing requirements related to Public Improvement Contracts. The Executive Director may also waive all or a portion of the requirements for furnishing a performance bond and payment bond, excuse bid security and authorize contracts to be reinstated.

3. **Contracts Available from a Sole Source.** Goods, Services and public improvements that are available from only one source may be purchased through direct negotiation without competitive Solicitation.
  - a. **Method of Selection and Record of Determination.** The Purchasing Manager shall make a written record of the facts that support the determination that the product or Service or improvement is only available from a single source and that alternative products, Services or improvements would be unsatisfactory for the Commission's needs. Purchasing Manager shall approve a Sole Source selection in amounts not exceeding \$100,000. The Executive Director shall approve a Sole Source selection in amounts that exceed \$100,000 within his/her expenditure authority.
  - b. **Notice.** At least three (3) business Days before making a sole source procurement for which the Contract Price will exceed \$100,000 except for Public Improvement Contracts, the Purchasing Manager shall publish notice of the procurement that: (i) identifies the Goods or Services sought, (ii) requests statements of interest from vendors who are qualified to provide the desired Goods or Services, and (iii) states that if no responses are received from qualified vendors within the time period specified in the notice, the Purchasing Manager will proceed with a sole source procurement.
4. **Emergency Exemptions.** The Board or Executive Director may exempt any Contract otherwise subject to competitive bidding requirements upon written findings that substantiate that an Emergency exists as set forth in ORS279B.080 or ORS 279C.335 and describe the method used for the selection of the particular Contractor. If the Contract amount exceeds the Executive Director's expenditure authority, the Board shall approve the expenditure in advance or be requested to ratify the Contract either at a special Commission meeting or at the next regularly scheduled Commission meeting.
  - a. **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract shall be limited to the Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.
  - b. **Emergency Contract Modification.** Emergency Contracts may be modified by Amendment, Change Order or Construction Change Field Directive to address conditions described in the original declaration.
  - c. **Excusing Bonds.** The Board or Executive Director may also state that the Commission waives the requirements for furnishing a performance bond and payment bond for the Emergency Contract. After making the declaration those bonding requirements are excused, see special

requirements for Public Improvement Contracts Part 4, Section II, Subsection B.

5. **Renewals.** Contracts that are being renewed or extended in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures. The Commission may authorize any Contract renewal or extension. The Executive Director may authorize extensions and Contract renewals provided that the aggregate amount of the Contract, including any extension or renewal does not exceed the Executive Director's expenditure authority.

#### IV. SPECIAL PROCUREMENTS

**A. General.** The following Class Special Procurement or Contract-Specific Special Procurements are subject to the procedures described below:

**B. Board Discretion.** The following Classes of Special Procurement are exempt from competitive bidding. Contracts may be awarded by direct appointment or any method which the Purchasing Manager determines in writing to be the most advantageous of the Commission:

1. Purchase of Goods and Services administered by other state or local public agency cooperative procurements or price agreements pursuant to the terms of such agreements as provided in ORS 279A.200;
2. Temporary extensions of an expiring and non-renewable price agreement or cooperative procurement Contracts as may be established by the Board; and,
3. Purchase of Goods or Services under federal General Services Administration (GSA) Price Agreements established between the federally approved vendors pursuant to established GSA guidelines.

**C. Special Procurement Exemption Procedures.**

1. **Board Special Procurement.** The Board may deem a particular Contract or class of Contracts a Special Procurement and may award by direct appointment or any method which the Board deems in the best interest of the Commission. A request for an exemption should contain the following:
  - a. The nature of the project or type of procurement;
  - b. Estimated cost of the anticipated value of procurement;
  - c. Findings to support the substantial cost savings anticipated by the exemption from competitive solicitation or substantially promote the public interest in a manner that could not practicably be realized with competitive solicitation;



- d. Findings to support the reason that the special procurement would be unlikely to encourage favoritism or diminish competition for the public Contract; and,
- e. Proposed alternate Contracting methods, if any.

Prior to adoption of findings and award of a Special Procurement, the Commission shall publish a public notice in at least one newspaper of general circulation in the area where the special procurement is to be performed. In making a final determination regarding a Special Procurement, the Board may consider the type, cost, amount of the Contract, number of persons available to Bid, and such other factors as it may deem appropriate.

- 2. **Executive Director Special Procurements.** The Executive Director may deem a particular Contract or a class of Contracts a Special Procurement and may award by direct appointment or any method which the Executive Director deems in the best interest of the Commission, where such Contract or Contracts do not exceed the Executive Director's delegated authority. A request for a Special Procurement exemption shall follow the procedures outlined in Item 1 above.

**V. RESERVED FOR FUTURE USE**

**VI. CONTRACTING AUTHORITIES AND RESPONSIBILITIES**

**A. Powers Reserved to the Board.**

- 1. **Contract Review Board Authority.** The Board reserves to itself the exercise of all of the duties and authority of a contract review board under the Public Contracting Code, including, but not limited to, the power and authority to:
  - a. Hear Debarment and pre-qualification appeals;
  - b. Create and exempt a particular Contract or class of Contracts under ORS 279A.025 and Special Procurements under ORS 279B.085; and
  - c. Adopt any amendments to the Rules pursuant to Part 3 below.
- 2. **Contract Award.** The Board reserves to itself the authority to approve the award of all Public Contracts for which the Contract Price exceeds the expenditure authority of the Executive Director. The expenditure authority limits apply to the aggregate of the initial Contract plus any Amendment or subsequent Change Order. The Board further delegates to the Executive Director authority to execute all Public Contracts as authorized by the Board.

3. **Amendment of Rules.** All amendments to these Rules shall be made by resolution of the Board following a hearing at which members of the public have the opportunity to appear and submit comments.

**B. Authority and Responsibility of Executive Director and Purchasing Manager.**

1. **General Authority.** The Executive Director is authorized to take all action that he or she deems necessary or convenient to implement these Rules except for those powers and authorities expressly reserved to the Board. Without limiting the generality of the foregoing, and subject to these Rules, the Purchasing Manager or designee is authorized to determine the manner in which Contractors for particular Contracts shall be selected, issue all Solicitation Documents, hear all Contract Award and prequalification protests, determine Offeror qualifications, establish the Conditionally Responsible Bidder List, and cause to be executed on behalf of the Commission all duly awarded Contracts.
2. **Executive Director Regulations.** The Executive Director may develop Contract and Solicitation forms and promulgate administrative rules, procedures and delegation orders under these Rules. The Executive Director shall establish practices and procedures that:
  - a. Do not encourage favoritism or substantially diminish competition;
  - b. Allow the Commission to take advantage of the cost-saving benefits of alternative contracting methods and practices;
  - c. Give preference to Goods and Services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal; and
  - d. Give preference to Goods that are certified to be made from recycled products when such Goods are available, can be substituted for non-recycled products without a loss in quality, and the cost of Goods made from recycled products is not significantly more than the cost of Goods made from non-recycled products.
  - e. Allow the Commission to look to past performance on private and public contracts to determine Contractor responsibility.
3. **Contract Oversight and Contract Award.** The Purchasing Manager shall oversee all public contracting activities of the Commission and shall have the authority and responsibility to award all contracts on behalf of PDC, subject to the approval of the Board for contracts exceeding the Executive Director's expenditure authority. This includes Personal Services Contracts and Public

Improvement Contracts. The Purchasing Manager shall establish procedures to implement these Rules and update the procedures as appropriate.

4. **Mandatory Review and Rule Amendment.** The Executive Director shall designate appropriate staff to review and recommend necessary changes to the Rules following each session of the Oregon state legislature and may, from

time to time, recommend other amendments to the Rules. All amendments to the Rules will be promulgated by the Board.

5. **Delegation and Expenditure Authority of Executive Director.** The Board has delegated to the Executive Director authority to enter into Contracts; negotiate, modify, extend and reinstate Contracts; approve Amendments, Change Orders and Construction Change Field Directives and take other actions to enact these Rules within the expenditure authority limits. The Executive Director may further delegated limited expenditure authority and the authority to enter, modify, amend, Change Order, Construction Change Field Directive and take other actions consistent with these Rules to Commission staff. The Board shall approve the award of all public Contracts for an amount that exceeds the expenditure authority of the Executive Director. The above expenditure authority limits apply to the aggregate of the initial Contract as amended or as increased by subsequent Amendment, Change order and/or Construction Change Field Directive.

## VII. POLICY AND PROGRAM COMPLIANCE

- A. **General.** All Offerors shall comply with the policy and program requirements as set forth in the Solicitation Document to include but not limited to Commission, City of Portland and other requirements.
- B. **Business and Workforce Equity Policy.** All Bidders and Proposers shall comply with the Commission's Business and Workforce Equity Policy as set forth in the Solicitation Documents, including the Business Equity Program and the Workforce Equity Program, as applicable.
- C. **Green Building Policy.** When applicable, bidders and proposers shall comply with the City of Portland Green Building Policy adopted by City Council on April 27, 2005 (Resolution No. 36310) and by the Portland Development Commission Board of Commissioners on June 22, 2005 (Resolution No. 6262).
- D. **Equal Employment Opportunity (EEO) Certification.** All Contractors doing more than \$2,500 of business annually with the Commission must be certified as an Equal Employment Opportunity employer by the City of Portland.
- E. **City of Portland Business License.** A city business license is required for anyone doing business in the City of Portland grossing \$50,000 or more annually.

- F. Purchases from Commission Employees.** Purchases of materials or services may not be made from any Commission employee. The Executive Director may waive this requirement with appropriate findings to document the decision.

## VIII. FEASIBILITY AND COST ANALYSIS

- A. Feasibility and Cost Analysis.** Except as set forth in Part 1, Section VIII, Subsections B and C below, before conducting a Procurement for Services (other than construction and related services not subject to ORS Chapter 279B) with an estimated Contract Price that exceeds \$250,000, the Commission must:
1. Demonstrate, in accordance with ORS 279B.036, that performing the services with the Commission's own personnel and resources is not feasible; or
  2. Demonstrate, by means of a written cost analysis in accordance with ORS 279B.033, that the Commission would incur less cost in conducting the procurement than in performing the services with the Commission's own personnel and resources.

The Commission will keep a record of the feasibility and cost analysis findings made under this Section VIII, along with the basis for the Commission's decision to proceed with the related procurement and provide copies of those records each calendar quarter to the Board.

- B. Salary or Wage and Benefit Costs.** Notwithstanding a determination that the Commission would incur less cost in conducting the procurement than in performing the services with the Commission's own personnel and resources, the Commission may not proceed with the procurement if the sole reason that the costs to procure the services are lower is that the salary or wage and benefit costs for contractors and employees described in ORS 279B.033(1)(b)(A) are lower than the salary or wage and benefit costs for the Commission's employees described in ORS 279B.033(1)(a)(A).
- C. Personnel and Resource Availability.** Notwithstanding a determination that the Commission would not incur less cost in conducting the procurement than in performing the services with the Commission's own personnel and resources, the Commission may proceed with the procurement if at the time the Commission intends to conduct the procurement, the Commission lacks personnel and resources that are necessary to perform the services within the time in which the services are required.

## IX. SUSTAINABLE PROCUREMENT

- A. General.** The Commission recognizes that the types of materials, products, technology and services it directly purchases in the marketplace have inherent social, environmental and economic impact; and to the extent feasible and

economical, the Commission believes its commitment to sustainable practices should inform its purchasing decisions.

- B. Solicitation Documents and Contract Provisions.** In the direct procurement of goods and services, the Commission will include in all solicitation documents and standard form contract templates a requirement that selected Contractors “use recycled and recyclable products to the maximum extent economically feasible in the performance of the contract work.”
- C. Recycled Paper.** The Commission will purchase paper intended for general office use containing a minimum of 40% post-consumer waste recycled content, unless a written determination is made that this is not feasible.
- D. Chemical Cleaning Products.** The Commission will identify, purchase and use environmentally-preferable cleaning products which have a reduced effect on human health and the environment when compared with competing products serving the same purpose. The Purchasing Manager will make a determination of the environmental performance standards to be used prior to the release of a solicitation for chemical cleaning products or services that will require the use of chemical cleaning products.
- E. Use of Environmental Product and Services Label.** The Commission will use impartial, third-party environmental product and service standards when developing product specifications and procuring goods and services.
- F. Price Preference for Recycled Products.** Consistent with ORS 279A.125, the Commission gives preference to the procurement of goods manufactured from recycled materials 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 five percent (5%), or a higher percentage if a written determination is made by the Purchasing Manager in a particular solicitation.
- G. Landscape Maintenance.** Consistent with ORS 279B.225, all PDC contracts for lawn or landscape maintenance will contain a provision requiring the contractor to “salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.”
- H. Public Works Contracts Involving Demolition.** Consistent with ORS 279C.510, all PDC public works contracts for demolition will contain a condition requiring the contractor to “salvage or recycle construction and demolition debris, if feasible and cost-effective.”

## Part 2: Public Contracts

### I. SCOPE

#### A. Examples.

1. Public Contracts include, but are not limited to, the following:
  - a. Contracts for the purchase of Goods, equipment, supplies, or materials;
  - b. Public Improvement Contracts generally and further outlined in Part 4 Public Improvement Contracts;
  - c. Alternative Contracts generally and further outlined in Part 5 Alternative Contracts;
  - d. Service Contracts for which the Work has traditionally been performed by Contractors selected primarily on the basis of price as opposed to unique professional qualifications; and
  - e. Contracts with a temporary staffing agency to supply labor, which is of a type that can generally be done by any skilled Worker.

### II. SOLICITATION PROCEDURES FOR PUBLIC CONTRACTS

- A. **Generally.** It is the policy of the Commission and the State of Oregon to encourage public contracting that supports competition, impartiality and cost savings to the public.
- B. **Division of Contracts.** No procurement or Public Contract may be artificially divided into parts or phases for the purpose of avoiding any of these Rules.
- C. **Record of Selection Method.** The Purchasing Manager shall keep a written record of the method used to award every Public Contract over \$5,000.00 and the basis of the award.
- D. **Cooperative Procurements.** The Purchasing Manager may purchase Goods and Services under joint and permissive cooperative procurements as provided in ORS Chapter 279A.200-225. When procuring Goods or Services using advertised Invitations to Bid or a Request for Proposals, the Purchasing Manager shall consider whether the Solicitation should provide a basis for permissive cooperative procurements by other contracting agencies. When the amount of the procurement exceeds \$250,000, a public notice shall be posted per ORS Chapter 279A.215.

- E. Determining Appropriate Solicitation Procedure.** To determine the correct solicitation procedure to follow, the Purchasing Manager shall:
1. Estimate the total amount of the Contract, including any anticipated or potential Amendments, Change orders and/or Construction Change Field Directives; and
  2. Utilize the solicitation procedure that encompasses the anticipated expenditure level. If an original Contract does not exceed the informal Contract limit, but it is anticipated that Amendments increasing the value of the Contract to greater than the limit will be negotiated, the selection of a Contractor to perform such Work shall be guided by the process appropriate for the anticipated expenditure level.
  3. Contracts for Goods and Services other than Personal Services may also be awarded from a Request for Proposal, where cost may be factored with other criteria in the Solicitation Documents such as the Contractor's qualifications and other relevant factors. If such a purchase is made with a Request for Proposal, any section in this Part 2 that refers to Bids should be read as referring to "Proposals," any section referring to "Bidder" should be read as referring to "Proposers" and any section referring to the "lowest responsive and Responsible Bidder" should be read as referring to the "highest-ranked responsive Responsible Proposer."
  4. The Executive Director may exempt individual Intermediate and Formal Procurements upon written findings as provided in Part 1, Section III, Subsection C, Item 2.
- F. Procedures for Small Procurement not Exceeding \$5,000.** Contracts for which the estimated Contract Price does not exceed \$5,000 may be awarded pursuant to the following Solicitation method:
1. Solicitation is not required, although it is encouraged.
  2. If an original Contract does not exceed \$5,000, but it is anticipated that Amendments or Change Orders increasing the value of the Contract will be negotiated, the selection of a Contractor to perform such Work shall be guided by the appropriate process for the anticipated expenditure level.
  3. Sections G through GG of this Part 2 do not apply to small procurements.
- G. Procedures for Intermediate Procurement between \$5,000 and \$100,000.** Contracts for which the estimated Contract Price is above \$5,000 and does not exceed \$100,000 may be awarded using one of the following two informal Solicitation methods.

1. \$5,000 - \$25,000: Verbal or written solicitation to a minimum of three (3) viable firms. A written record of all firms solicited and Quotes received shall be maintained. If three (3) Quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the Quote.
2. \$25,001 - \$100,000: Solicitation to a minimum of three (3) viable firms based on written requirements or Scope of Work. The response to the solicitation shall be in writing. A written record of all firms solicited and Quotes received shall be maintained. If three (3) Quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the Quotes.

**H. Procedures for Formal Procurement Greater than \$100,000.** Contracts for which the estimated Contract Price above \$100,000 may be awarded pursuant to the following Solicitation method:

1. **Time, Manner and Place of Advertisement for Bids.**
  - a. An advertisement for Bids shall be published at least once in at least one newspaper of general circulation in the Portland area and in additional publications as the Purchasing Manager may determine to be necessary or desirable to encourage competition and participation;
  - b. The last publication date of the advertisement in any publication shall be at least five (5) Days prior to any Bid closing and two (2) Days prior to any pre-solicitation conference; and
  - c. A copy of each Bid notice shall be posted on the Commission web site and a Hard Copy shall be made available upon request.
  - d. If the Purchasing Manager determines that electronic advertisement is likely to be cost-effective, nothing in these Rules shall be deemed to prevent the Commission from satisfying the advertisement requirements by publishing an advertisement electronically.
2. **Content of Advertisement for Formal Solicitations.** The advertisement shall provide the following information to prospective Bidders:
  - a. The date and time after which bids will not be received. If the Solicitation is for a Public Improvement with an estimated Contract price of more than \$100,000, the Solicitation closing shall be on a Tuesday, Wednesday or Thursday between 2 p.m. and 5 p.m. unless the Solicitation is for the construction of highways, bridges or other transportation facilities;



- b. The time, date and place that prequalification applications shall be filed in accordance with these Rules and the class or classes of Work for which Bidders shall be prequalified, if prequalification is a requirement;
- c. The character of the Work to be done, the Services to be provided or the material or thing to be purchased;
- d. Policy and program compliance to include Business and Workforce Equity Programs requirements, if any;
- e. The date, time and place of the pre-solicitation conference, if any;
- f. The manner in which copies of the Solicitation Documents may be obtained and the address of the office where the specifications may be reviewed or obtained;
- g. The name and title of the person designated for receipt of bids;
- h. The address where offers shall be submitted; and
- i. The date, time and place that the Commission will publicly open the bids.

**I. Bid Documents.** The Bid Documents shall provide sufficient information for prospective Bidders to allow them to evaluate their interest and qualifications to supply the specified Goods or Services, and to determine a Bid price. Prior to the submittal date, Bidders shall have the opportunity to review all Commission background documents as described and in the manner as set forth in the Bid documents. An Intermediate Procurement may require less information than a Formal Procurement as determined by the Purchasing Manager.

- 1. **Contents.** The Bid documents, at a minimum, shall include the following as applicable:
  - a. The date and time after which bids will not be received and the place at which the Bids may be submitted;
  - b. The date that prequalification applications shall be filed under ORS 279B.120 and the class or classes of Work for which Bidders shall be prequalified, if prequalification is a requirement;
  - c. A description of the Goods or Services desired, specifications and drawings, delivery or performance schedule, inspection and acceptance requirements, and overall scope of Work;
  - d. Policy and program compliance requirements to include Business and Workforce Equity Programs, Green Buildings Policy or other requirements, if any;

- e. The last day to submit a request for clarifications, substitutions and protest to the Solicitation Documents, if any;
- f. Special evaluation criteria, if any;
- g. The date, time and place of the pre-Bid conference, if any;
- h. A statement that the Commission may in its discretion reject any Bid that does not substantially comply with all prescribed public procurement procedures and requirements;
- i. A statement that the Commission may reject for good cause any or all bids upon the Commission's finding that it is in the public interest to do so;
- j. A statement that the Bid shall contain a statement indicating whether the Bidder is a "Resident Bidder," as defined in ORS 279A.120;
- k. A statement that the Commission shall give preference to Goods that are certified to be made from recycled materials in accordance with ORS 279A.125 if any;
- l. The address of the office where the specifications of the Work, material or things may be reviewed or obtained;
- m. The name and title of the person designated for receipt of Bids and the date, time and place for receipt of bids and time and location of the public Opening of Bids if any;
- n. Bid security requirements, if any;
- o. Contract provisions, terms and conditions to be tendered to successful Bidder;
- p. A statement that the Bidder is required to certify that the Bidder has not discriminated or will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts as set forth in ORS 279A.110;
- q. A statement that the Bidder at time of bid submittal, unless otherwise stated in Bid Documents, shall possess a valid City of Portland Business license, Construction Contractors Board (CCB) license, a Public Works Bond, and other license as may be required, and that the Bidder must meet the requirements of an Independent Contractor; and,
- r. If a multi-year Contract, a provision that makes the Contract subject to appropriation of funds and allows the Commission to modify, amend or terminate without prejudice.

**2. Compliance with Terms and Conditions.**

- a. Bidders are responsible for noting and abiding by the terms and conditions included in the Bid Documents and any Addenda, and these Rules.
- b. By signing and submitting the Bid Proposal form, the Bidder is acknowledging acceptance of and the intent to abide by the terms and conditions of the Bid documents and form of Contract agreement to be entered into.

3. **Deposit for Bid Documents.** The Commission may require a deposit or charge for reasonable costs for Bid Documents and mailing. A deposit may also be required when, in the judgment of the Purchasing Manager, it is necessary to encourage the return of detailed plans, specifications or other supporting information used by potential Bidders in preparing the Bid.

**J. Addenda to Bid Documents.**

1. **Form Changes to Bid Documents** shall be made by written Addenda. The Bidder shall acknowledge, in writing, receipt of all Addenda issued, on the Bid form or separately by letter, prior to the Bid Closing.
2. **Distribution.** Addenda shall be sent by mail, fax or e-mail to every prospective Bidder on file with the Commission who has obtained the Bid Documents from the Commission.
3. **Timeliness.** Addenda shall be issued at least seventy-two (72) hours prior to Bid Closing, unless otherwise stated in the Bid Documents or subsequent Addenda.

**K. Bidder Prequalification.** The Purchasing Manager may require prequalification of Bidders as a prerequisite to submitting a Bid.

1. If prequalification is required, such information shall be contained in the Bid notice;
2. The Bid documents shall provide prospective Bidders with information on the standards and process for prequalification;
3. Within the timeframes set forth in the Solicitation Documents, but no later than five (5) Days prior to Closing, the Purchasing Manager shall provide Notice of the decision to qualify or deny prequalification to an applicant stating the reason for the action taken and the right to appeal the decision; and
4. Appeals of denial of prequalification decisions will be conducted in the same manner as appeals of disqualification procedures.

**L. Bid Security.**

1. **Bid Security.** Bid security not to exceed ten percent (10%) of the base Bid(s) or total of all extended quantities of unit prices may be required by the Purchasing Manager for public Contracts. Bid security may be in the form of a surety bond, cashier's check, certified check, or irrevocable letter of credit.
2. **Return of Bid Security.** Upon the execution of the Contract and bond by the successful Bidder, each Bidder's Bid security shall be returned. The Bidder who is awarded a Contract and who, within the schedule set forth in the Bid Documents, fails to enter into a Contract shall forfeit the Bid security that accompanied the successful Bid. Any forfeit Bid security shall be considered as liquidated damages and not a penalty for failure of the Bidder to execute the Contract.

**M. Brand Name Products.** Specifications for Contracts shall not expressly or implicitly require any product by one brand name or mark, nor the product of one particular manufacturer or seller except for the following reasons, documented in writing:

1. It is unlikely that such exemption will encourage favoritism in the awarding of public Contracts or substantially diminish competition for public Contracts;
2. 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 Commission;
3. There is only one manufacturer or seller of the product of the quality required; or
4. Efficient utilization or maintenance of existing equipment, supplies or products requires the purchase of one particular manufacturer.

**N. Pre-Bid Conferences.** The Purchasing Manager may hold a pre-Bid conference to answer questions regarding the project, explain procurement requirements, conduct site inspections or assist prospective Bidders in meeting all policy and compliance requirements.

1. **Announcement.** The time and place of the conference shall be announced to all prospective Bidders in the Bid notice and Bid Documents. The pre-Bid conference shall be held no sooner than two (2) Days after the last publication of the Bid notice advertisement, but sufficiently before Bid closing to allow consideration of the conference results in preparing bids.
2. **Attendance.** The Purchasing Manager may require mandatory attendance at the pre-Bid conference as a condition for bidding. Such requirement shall be

included in the Bid notice and in the Bid Documents. A list of attendees shall be documented in the Bid file.

3. **Addenda.** Statements at the pre-Bid conference shall not change the Bid Documents unless confirmed to all prospective Bidders by means of a written Addendum to the Bid Documents.

**O. Record of Potential Offerors.** A record shall be maintained and made available to the public for review that identifies all persons and entities that receive Solicitation Documents from the Commission.

**P. Manner of Bid.**

1. **Documents.** Completed Bid forms and documents as specified or provided in the Bid package furnished to Bidders shall be legible and signed by an authorized representative of the Bidder. For Hard Copy submissions, alterations or erasures shall be initialed in ink by the person signing the Bid.
2. **Bid Samples and Descriptive Literature.** Product samples, specifications or other descriptive information or literature may be required of each Bidder in order to evaluate required characteristics of the items Bid. Submission requirements and information on returning items shall be included in the Bid Documents.
3. **Identification of Bids.** To ensure proper identification and special handling, Bids should be submitted to the address listed in the Bid notice in the manner specified in the Bid notice and appropriately marked with the name of the Bidder, the Bid number, the name of the project being Bid, and the date and time of the Bid closing. The Commission shall not be responsible for the proper identification and handling of a Bid not in conformance with these requirements.
4. **Receipt of Bid.** It is the Bidder's responsibility to ensure that the Bid is received by the Commission prior to the stated Bid closing
5. **Public Opening.** An Electronic Bid shall not be accepted when the Bid requires a public opening.

**Q. Modification of Bids and Withdrawal of Bids.**

1. **Modifications.** A Bid once submitted may be modified in writing by the Bidder prior to the time and date set for Bid closing. Any modifications shall be prepared on the company letterhead, signed by an authorized representative of the Bidder, and state that the new document supersedes or modifies the prior Bid. It is the Bidder's responsibility to ensure that the modification is received by the Commission prior to the date and time established for Bid closing. The modification should be delivered in the manner specified in the

Bid notice and clearly marked with the Bidder's name, the Bid number, the project name, date and time of Bid closing, and identified as a "Bid Modification."

**2. Withdrawals Prior to Bid Closing.**

- a.** Bids may be withdrawn by written notification on company letterhead signed by an authorized representative of the Bidder and received prior to the date and time established for the Bid closing. It is the Bidder's responsibility to ensure that the withdrawal is delivered to the Commission in an envelope that is clearly marked with the Bidder's name, the Bid number, the project name, date and time of Bid closing, and identified as "Bid Withdrawal."
- b.** Withdrawn bids shall be returned to the Bidder unopened.

**R. Protest of Bid Solicitation Documents.**

- 1. Time for Submission of Protest.** Protests of the terms, conditions and other contents of the Bid Solicitation Documents shall only be considered when presented to the Purchasing Manager in writing in accordance with the following timelines.
  - a.** For public Contracts, five (5) Days prior to Bid closing or other timeline as may otherwise be stated in the Solicitation Documents; and
  - b.** Protests not asserted or not properly asserted within these timelines shall be deemed waived by the protester.
- 2. Basis for Protest.** A protest shall include a detailed statement of the legal and factual grounds for the protest; a description of the resulting prejudice to the protesting Bidder; and a statement of form of relief requested or any proposed changes to the Bid Documents.
- 3. Identification of Protest.** It is the Bidder's responsibility to ensure that the protest is received by the Commission within the stated timelines. The protest should be delivered via email or in an envelope, as specified in the Bid Documents, directed to the Purchasing Manager that is clearly marked with the Bidder's name, the Bid number, the project name, date and time of Bid closing, and identified as a "Bid Document Protest."
- 4. Delay of Bid Closing.** If the Commission receives a protest from a Bidder in accordance with this section, the Purchasing Manager may in his or her discretion extend the date of Bid closing if the Purchasing Manager determines an extension is necessary to consider the protest and, if necessary, to issue Addenda to the Bid Documents or otherwise cancel the solicitation.

**S. Request for Clarification or Propose Substitution.** Prior to the deadline for submitting a protest above, or at such other time as the Bid Documents may otherwise specify, a Bidder may request that the Purchasing Manager clarify any provision of the Bid Documents or may propose a substitution. The clarification to a Bidder, whether orally or in writing, does not change the Bid Documents and is not binding on the Commission unless the Commission amends the Bid Documents by Addenda. Failure to timely request clarification or submit a request for substitution shall be deemed a waiver of the request.

**T. Receipt, Closing, and Recording of Bids.**

- 1. Receipt.** Upon receipt of a Hard Copy Bid or modification by the Commission, each Bid and modification shall be time stamped or marked by hand, not opened, and shall be stored in a secure place until Bid closing. If Bids or modifications are opened inadvertently or are opened prior to the time and date set for Bid closing, the bids shall be resealed and stored for opening at the correct time. When this occurs, documentation of this procedure shall be placed in the Bid file. Upon receipt of an Electronic Bid or modification by the Commission, the Bid or modification shall be stored in an electronic folder designated by the Purchasing Manager.
- 2. Opening and Recording.** Bids submitted as part of a Formal Procurement and modifications shall be opened publicly, immediately after the deadline for the submission of Bids and in the place designated by the Bid Documents. The Purchasing Manager shall designate representatives who will determine and declare the precise time of day for purposes of establishing the Bid submittal deadline and the opening of each timely received Bid, read aloud the Bid price, and record Bid prices on a Bid tabulation sheet.
- 3. Availability.** The opened bids shall be available for public inspection subject to the need of the Commission to evaluate such bids prior to Notice of Intent to Award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential. Commission legal counsel shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Material so designated shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

**U. Late Bids, Late Withdrawals, and Late Modifications.** A Bid received after the Bid submittal deadline is late. Any request for Bid withdrawal or modification received after the Bid submittal deadline is late. A late Bid or late Bid modification shall not be considered and shall be returned to the Bidder unopened unless the Commission in its discretion determines that the late submittal

increases competition, does not prejudice any Bidder, does not compromise the integrity of the competitive bidding system or is in the best interest of the Commission. A late Bid withdrawal request received after the Bid submittal deadline shall not be honored. The Bid shall be considered with all other submittals.

## V. Mistakes in Bids.

1. **General.** Clarification or withdrawal of a Bid because of an inadvertent, nonjudgmental mistake in the Bid requires careful consideration to protect the integrity of the competitive bidding system and to ensure fairness. Except as provided in this Rule, if the mistake is attributable to an error in judgment, the Bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent it is not contrary to the interest of the Commission or does not prejudice other Bidders.
2. **Mistakes Discovered Before Bid Closing.** Mistakes discovered before Bid closing may be corrected as provided above.
3. **Mistakes Discovered After Bid Closing but Before Award.**
  - a. **Minor Informalities.**
    - i. **Definition.** Minor informalities are matters of form rather than substance or insignificant mistakes that can be waived or corrected without prejudice to other Bidders or the Commission.
    - ii. **Examples.** Minor informalities include, but are not limited to, a Bidder's failure to return the required number of signed Bid Documents; failure to sign in the designated block so long the Bid Documents otherwise evidence an intent to be bound; clerical, transposition or written figure discrepancy with numbers price; or, failure to acknowledge receipt of an Addendum to the Bid Documents if it is clear that the Bidder received the Addendum and intended to be bound by its terms or if the Addendum did not affect price, quantity, quality, or delivery time.
    - iii. **Not Included.** Minor informalities do not include mistakes that affect price, quantity, quality, delivery, or contractual conditions except in the case of informalities involving a mathematical discrepancy between unit price and extended price; the unit price shall govern.
    - iv. **Procedure.** If the Commission discovers a minor informality after opening but before award, the Commission may in its discretion correct or waive the minor informality if it is in its interest to do so and



may request a written clarification from a Bidder or make other determinations.

- b. **Mistakes Where Intended Bid is not Evident.** The Purchasing Manager may reject a Bid in which a mistake is clearly evident on the face of the Bid form, and the intended Bid is not clearly evident or cannot be substantiated from accompanying documents or objectively verified through other means.

**W. Time for Consideration of Bids.** Bids shall be valid for the number of Days specified in the Bid Documents unless otherwise mutually agreed to in writing for an extended period.

**X. Extension of Time for Consideration of Bids.** Notwithstanding Item W above, after opening the bids, the Purchasing Manager may request in writing that the Bidders extend the time during which the Commission may accept their bids.

**Y. Cancellation of Bid.**

1. **Cancellation in the Public Interest.** A Bid may be cancelled, wholly or in part, when it is determined by the Purchasing Manager to be in the public interest to do so. The reasons for cancellation shall be documented and be made part of the Bid file.
2. **Notice of Cancellation.** When an Invitation to Bid is cancelled prior to Bid opening, a written notice of cancellation shall be sent to all holders of Bid Documents. All Bids received shall be returned to Bidders unopened.

**Z. Rejection of All Bids.** All Bids may be rejected after Bid opening when it is determined by the Purchasing Manager to be in the public interest to do so. If the time for consideration of Bids has expired without a Bid award, all Bids shall automatically be rejected, unless an extension of time has been mutually agreed upon in writing between the Commission and the apparent low Bidder. In the event all Bids are rejected, all Bids received shall become part of the Bid file and the Bid bonds, if any, shall be returned. In any case where competitive Bids are required and all Bids are rejected, and the proposed project is not abandoned, new Bids may be called for as in the first instance.

**AA. Negotiation with Bidders.**

1. **General.** There shall be no negotiations with any Bidder prior to Solicitation closing. Prior to award of Contract, the Commission may negotiate with a Proposer or Bidder to clarify its Quote, Bid or Proposal or to effect modifications that will make the Quote, Bid or Proposal acceptable or more advantageous to the Commission or as set forth in this Section.

2. **All Bids Exceeding Cost Estimates.** If all responsive Offers from Responsible Bidders as the result of a Solicitation exceed the project cost estimate, the Commission may negotiate with the lowest Responsible Bidder prior to award of the Contract to solicit value engineering and other options to bring the cost within the project cost estimate, provided the scope of Work is not substantially changed from the original Solicitation.
3. **No Bids Received.** If no Offers are received as the result of a Solicitation, the Commission may negotiate and enter into a Contract with one entity, provided the scope of Work is not substantially changed from the original Solicitation.
4. **Negotiation Disclosure.** Notwithstanding any other provision of law, the records of a Bidder used in Contract negotiation under this section that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502, are not subject to public inspection until after the negotiated Contract has been awarded or the negotiation process has been terminated

**BB. Bid Evaluation and Award.**

1. **General.** The Contract, if awarded, shall be awarded to the lowest responsive and Responsible Bidder who has substantially complied with the Bid Documents, these Rules and all other prescribed public bidding rules and procedures. The Commission may award by item, groups of items, or the entire Bid provided such award is consistent with the Bid Documents and in the public interest. The Purchasing Manager reserves the right to waive any informality in a Bid; reject any Bid not in substantial compliance with the Bid Documents; reject any Bid not in compliance with these Rules or state statute regarding public contracting; or reject all bids pursuant to ORS 279B.100 or ORS 279C.395 as applicable to the work and these Rules.
2. **Bid Tabulation Sheet.** The Purchasing Manager shall ensure that a written record is produced that indicates how each Bid responds to the criteria set forth in the Bid Documents. The Bid tabulation sheet shall be made available upon request for public review after the Commission has evaluated all bids.
3. **Special Requirements to Determine Responsiveness.**
  - a. **General.** The Bid Documents shall set forth any special requirements and criteria that will be used to determine which Bidders are responsive Bidders.
  - b. **Review of Unit Bid Prices.** Unit Bid prices or Bid alternatives will be reviewed for unbalanced pricing or Bid loading.

- c. **Considerations for Establishing Special Requirements.** Any special requirements need not be precise predictors of actual future costs, but to the extent possible such requirements shall:
  - i. Be reasonable estimates based upon information the Commission has available concerning future use; and
  - ii. Treat all bids equitably.
- d. **Special Requirements.** Examples of special requirements include, but are not limited to, transportation costs, volume weighing, trade-in allowance, depreciation allowances, cartage penalties and ownership or life cycle cost formulas.

#### **4. Product or Service Acceptability.**

- a. The Bid Document shall set forth the criteria to be used in determining product or service acceptability. The Purchasing Manager may require the submission of samples, descriptive literature, technical data, or other material, and may also require any of the following prior to award:
  - i. Demonstration, inspection or testing of a product or service prior to award for such characteristics as quality of Workmanship;
  - ii. Examination of such elements as appearance, finish, taste, or feel; or
  - iii. Other examinations to determine whether the product or service conforms to the Bid Document.
- b. The acceptability evaluation is conducted only to determine that a Bid is responsive to the Bid Document. A Bidder's product or service that does not meet the minimum requirements may be rejected in the Commission's discretion. Product or service rejections are not considered Bidder disqualifications and are not grounds for appeal under state law.

#### **5. Determination of Lowest Responsible Bidder.** Following determination of responsiveness and product or service acceptability as set forth above, the Bids shall be evaluated to determine the lowest Responsible Bidder. The lowest Responsible Bidder is the lowest Bidder who has:

- a. Substantially complied with the Bid Document, these Rules and all prescribed public bidding procedures and requirements;
- b. Met the Standards of Responsibility. Responsibility determinations vest significant business judgment in the Purchasing Manager but must be based on substantial evidence. In determining if a prospective Bidder has

met the Standards of Responsibility, the Purchasing Manager may consider whether the Bidder has:

- i. Made 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 prospective Bidder to meet all contractual responsibilities;
  - ii. A satisfactory record of performance. A poor performance record yields a presumption that the Bidder's current performance will be poor and unsatisfactory, whether or not the Bidder is on the Conditionally Responsible Bidder List. The Bidder must demonstrate that the Bidder has the ability to complete the required work on time and satisfactorily. In determining whether the Bidder has a satisfactory record of performance, the Purchasing Manager may look to the Bidder's past performance on private and public contracts, including Commission Contracts, and whether the Bidder is on the Conditionally Responsible Bidder List.. The Purchasing Manager may also look to any proposed subcontractor's past performance on private and public contracts, including Commission Contracts, and whether a proposed subcontractor is on the Conditionally Responsible Bidder List ;
  - iii. A satisfactory record of integrity. The Purchasing Manager may document the record of integrity of a prospective Bidder, consider the Conditionally Responsible Bidder List and determine if the prospective Bidder is responsible under this subsection;
  - iv. Qualified legally to Contract with the Commission as an Independent Contractor;
  - v. Been Disqualified or Debarred by the Commission or is on the list established by the Construction Contractors Board pursuant to ORS 701.227;
  - vi. Supplied all necessary information in connection with the inquiry concerning responsibility; and
  - vii. Otherwise satisfied the conditions of ORS279B.110 or ORS279C.375, as applicable to the work.
- c. If a prospective Bidder fails to promptly supply information requested by the Commission concerning responsibility, the Purchasing Manager shall base the determination of responsibility upon any available information, or may make a finding that the prospective Bidder is not responsible.

- d. In the case of a nonresident Bidder, the Purchasing Manager shall add a percentage increase to the Bid equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides. For the purposes of administering this section, the Commission shall rely on information published annually by the Oregon Department of Administrative Services.

**6. Notice of Intent to Award.** At least seven (7) Days before award of a public Contract unless the Commission has determined that this is impracticable and provided a shorter timeframe in the Solicitation Documents, the Purchasing Manager shall provide written notice to all Bidders of the Commission's intent to award the Contract. The Purchasing Manager shall have the authority to waive the Notice of Intent to Award for Intermediate Procurement solicitations based on dollar amount and timeline. The notice of award shall not be final until the later of the following:

- a. Seven (7) Day after the date of the notice, unless otherwise provided in the Solicitation Documents; or
- b. Until the Purchasing Manager provides a written response to all timely filed protests, if any, that denies the protest and affirms the award; or, until any appeal of the Purchasing Manager's decision regarding a protest has been reviewed by the Executive Director.

**7. Low Tie Bids.** Low Tie Bids are Bids from responsive and Responsible Bidder that are identical in price, fitness, availability and quality and that meet all the requirements and criteria set forth in Bid Document. Low Tie Bids shall be awarded as follows:

- a. The Commission shall prefer Goods or Services that have been manufactured or produced in this state pursuant to ORS 279A.120; or if still tied
- b. The Commission shall then prefer the Bidder whose principal offices or headquarters are located in Oregon; or if still tied
- c. The Commission shall then prefer the Bidder whose principal offices or headquarters are located in Multnomah, Washington, or Clackamas County; or if still tied
- d. The Commission shall then prefer the Bidder whose principal offices or headquarters are located in the City of Portland; or if still tied
- e. Award shall be made by drawing lots among the remaining Bidders. Such Bidders shall be given notice and an opportunity to be present when the lots are drawn.

- f. If none of the tied Bidders are located in Oregon, award of the Contract shall be made by drawing lots. Such Bidders shall be given notice and an opportunity to be present when the lots are drawn.

**8. Availability of Award Decisions.** Tabulations of awarded bids may be obtained from the Purchasing Manager in person or upon written request specifying the Bid number or project name. Tabulations will be made available upon request.

**9. Documentation of Award.** Following award, a record showing the basis for determining the successful Bidder shall be made a part of the file, including the completed Bid tabulation sheet and written justification for any rejection of lower Bidder or higher scored Proposers.

**10. Availability.** The opened Bids shall be available for public inspection subject to the need of the Commission to evaluate such Bids prior to Notice of Intent to Award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential. Commission legal counsel shall determine that the information claimed to exempt is in fact exempt from disclosure under the Oregon Public Records Law.

**CC. Rejection of Individual Bids.**

1. **General.** The Purchasing Manager may reject wholly or in part, any Bid not in substantial compliance with all prescribed solicitation procedures and requirements, and may reject for good cause any Bid upon a written finding by the Purchasing Manager that it is in the public interest to do so.
2. **Reasons for Rejection.** The Purchasing Manager may in his or her discretion reject any Bid wholly or in part upon a written finding that:
  - a. The Bidder has not prequalified under or is disqualified under these Rules;
  - b. The Bidder is not currently registered with the Construction Contractors Board (CCB) or otherwise licensed as required;
  - c. The CCB has declared the Bidder not qualified under ORS 701.227, the Commissioner of the Bureau of Labor and Industries has declared the Bidder ineligible under ORS 279C.860 or the Bidder has been otherwise Disqualified or Debarred by the Board;
  - d. The Bid is nonresponsive, i.e., the Bid does not conform in all material respects to the Bid Documents, including all prescribed procedures and special requirements including without limitation satisfactory completion of MWESB outreach and compliance forms completion;

- e. The Bidder takes exception to the specifications or other terms and conditions, or is contingent upon the Commission's acceptance of different or additional specifications or terms and conditions;
  - f. The supply, service or construction item offered is unacceptable due to failure to meet the requirements of the Bid Documents;
  - g. The Bidder is nonresponsible, i.e., has not satisfied or is not capable of satisfying the Standards of Responsibility;
  - h. A court of competent jurisdiction has determined or the Commission or other agency has determined in writing that the Bidder has committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct or similar behavior within five (5) years of submitting the Bid;
  - i. A court of competent jurisdiction has determined or the Commission or other agency has determined in writing that the Bidder is responsible for more than one breach of a public or private Contract within three (3) years of submitting the Bid;
  - j. The Bid security, if required, has not been submitted or properly signed as provided in the Bid Documents;
  - k. The Bidder has failed to provide the nondiscrimination certification;
  - l. Other circumstances relevant to the Bid, or Bidder, indicate that acceptance of the Bid may impair the integrity of the selection process or result in an imprudent Contract; or
  - m. The Bidder has not met other Policy and Program compliance requirements as set forth in the Contract Solicitation Documents or these Rules.
3. **Form of Business Entity.** For purposes of this Rule, the Purchasing Manager may investigate any Bidder submitting a Bid so that previously disqualified Bidders or their officers and directors, or principal owners may not, by subterfuge, change of ownership, or other adjustments in formal appearance, avoid application of this Rule or of the disqualification provision of these Rules.

**DD. Protest of Contract Selection.**

- 1. **Time.** Any Bidder who has submitted a Bid to the Commission and who is adversely affected by the Commission's Contract award to another Bidder has seven (7) Days after issuance of the Notice of Intent to Award the Contract, unless a different protest period is provided in the Solicitation Documents, to

submit a written protest of the award to the Commission. If a Notice of Intent to Award is not issued, a protest following the same criteria above, must be submitted seven (7) days after contract award. The Commission shall not consider a protest submitted after the time period established in this Rule or such different period as provided in the Bid Documents.

2. **Grounds for Protest.** The Bidder's written protest shall specify the grounds upon which the protest is based. A Bidder is adversely affected only if the Bidder is eligible for award of the Contract and is next in line for award, i.e., the protesting Bidder shall claim that all lower Bidders or higher scored Proposers are ineligible for award because their offers were nonresponsive or that the Commission committed a material violation of a provision in the Bid Documents or of an applicable statute, and that the protesting Bidder was adversely affected.

Protests not asserted or not properly asserted under the requirements of Items 1. and 2. above shall be deemed waived by the protester.

3. **Authority to Resolve Protests.** The Purchasing Manager has the authority to settle or resolve a written protest submitted in accordance with the requirements of this Rule.
4. **Decision.** If a protest is not settled, the Purchasing Manager shall issue a written decision on the protest.
5. **Appeal of Decision.** An appeal of the decision by the Purchasing Manager shall be submitted to the Executive Director. The appeal shall be in writing and shall be received by the Commission within seven (7) Days of the issuance of the decision. The appeal shall identify the award in question and specifically outline the reason for the appeal. The written decision of the Executive Director regarding an appeal is final. Judicial review of this decision will be available to the extent provided by statute. The Bidder shall exhaust all avenues of administrative review before pursuing judicial review.

#### **EE. Contract Award.**

1. **Prompt Execution of Contract.** Upon notice of Contract award, the successful Bidder shall promptly execute the Contract and furnish insurance and bond information as may be required within fourteen (14) Days or other schedule as set forth in the Solicitation Documents. Failure to execute the Contract or to provide the required insurance and bond information within the required timelines may result in the rejection of the Bid and award the Contract to the next lowest responsive and Responsible Bidder, and, at the Commission's discretion, the Bidder shall forfeit its Bid security.



2. **Non-Resident Contractor.** If the Contract Price exceeds \$10,000, and the Contractor is a non-resident Contractor as defined in Part 1, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, length of Contract and such other information as the Department of Revenue may require before final payment can be received on the Contract. A copy of the report shall be forwarded to the Commission. The Commission shall satisfy itself that the above requirements have been complied with before it issues final payment.
3. **Payment and Performance Bonds.**
  - a. **Public Contracts.** The Commission may require payment and performance bonds for public Contracts. Such requirements shall be expressly set forth in the Bid Documents. However, the Commission shall not use such requirements to discourage competition.
  - b. **Time for Submission.** Upon the Commission's request, the apparent successful Bidder shall furnish required payment and performance bonds within fourteen (14) Days unless another schedule as set forth in the Solicitation Documents. If the Bidder fails to furnish the documents within the specified period, the Commission may reject the Bid and award the Contract to the next lowest responsive and Responsible Bidder, and, at the Commission's discretion, the Bidder shall forfeit its Bid security.

**FF. Execution of Contract and Performance of Work.**

1. **Negotiation.** Upon execution of a Contract, the Commission may, through an Amendment, Change Order or Construction Change Field Directive, negotiate with the successful Contractor regarding the scope, price, schedule and terms of the Contract so long as negotiations do not result in significant changes to the scope of Work in the original Solicitation Documents.
2. **Performance and Liquidated Damages.** Upon execution of the Contract and issuance of a Notice to Proceed, the successful Contractor shall complete the Work according to the scope, terms and schedule set forth in the Contract. Failure to satisfactorily complete all Work within the specified performance period, or satisfactorily be in compliance with all contract requirements may result in the assessment of liquidated damages, termination, or other penalties as set forth in the Contract.

- GG. Contract Termination.** When a Public Contract is terminated by mutual agreement, provision shall be made for the payment of compensation to the Contractor unless otherwise specifically set forth in the Solicitation Documents. In addition to a reasonable amount of compensation for preparatory Work and for all

costs and expenses arising out of termination, the amount to be paid to the Contractor:

1. Shall be determined on the basis of the Contract price in the case of any fully completed separate item or portion of the Work for which there is a separate or unit Contract price; and
2. May, with respect to any other Work, be a percent of the Contract price equal to the percentage of the Work completed.

### **III. REINSTATEMENT OF EXPIRED CONTRACTS.**

**A. Generally.** Contracts may be reinstated once, provided the following requirements of this Section are met.

1. The Contract was not extended or renewed in a timely manner due to unforeseen or unavoidable conditions;
2. The Contract is reinstated within sixty (60) Days of expiration of the original Contract; and
3. The Purchasing Manager has determined that the Work needs to be completed by the original Contractor after expiration of the Contract and there is no significant change in the Statement of Work and the reinstatement does not raise the aggregate amount of compensation beyond the Executive Director's authority given by the Board.
4. The Executive Director shall have the authority to waive the above requirements for reinstatement of a contract under circumstances that are deemed appropriate.

### **Part 3: Personal Services Contracts**

#### **I. SCOPE**

**A. Generally.** Personal Services Contracts are governed exclusively by Part 1, Section I (Scope) and Section II (Definitions) and this Part 3.

**B. Examples.**

1. Personal Services Contracts may include, but are not limited to, the following:
  - a. Contracts for Services performed in a professional capacity including Services of an accountant, attorney, engineer, information technology consultant, or architect;
  - b. Contracts for Services that are specialized, creative and research oriented; and
  - c. Contracts for Services as a consultant, construction project manager or project manager.
2. The following Contracts are not Personal Service Contracts and shall follow the general competitive public Contract bidding requirements as provided in Part 2.
  - a. Contracts with a temporary staffing agency to supply labor, which is of a type that can be generally done by any skilled Worker;
  - b. Contracts, even though in a professional capacity, primarily for equipment, supplies or materials; or
  - c. Contracts for which the Work has traditionally been performed by Contractors selected primarily on the basis of price (i.e., construction services; food services; or other services that do not require specialized skills, knowledge and resources).

#### **II. EXEMPTIONS**

**A. Generally.** It is the Commission's policy to promote competition in Solicitation of Public Services Contracts.

**B. Board Exemptions.** The Board may order a particular Personal Service Contract exempt from competitive solicitation requirements. A request for an exemption shall contain findings that it is unlikely that such an exemption will encourage favoritism in the awarding of the Contract or substantially diminish competition and;

1. **Findings to Support Substantial Cost Savings.** The awarding of the Contract pursuant to the exemption will result in substantial cost savings to the Commission; or
  2. **Findings to Support Unique Qualifications.** The nature or scope of services desired by the Commission requires a specific Contractor with unique qualifications, experience or knowledge otherwise unavailable, such as extensive expertise in a relatively narrow technical area or project.
- C. Executive Director Exemptions.** The Executive Director may order a particular Personal Services Contract that does not exceed the Executive Director's delegated expenditure authority exempt from competitive solicitation requirements. A request for exemption should contain the same information as set forth in Section B above.
- D. Emergency Exemptions.** The Board or Executive Director may exempt any Personal Service Contract otherwise subject to competitive bidding requirements upon written findings that substantiate that an Emergency exists as set forth in ORS 279B.080 and describe the method used for the selection of the particular Contractor. If the Contract amount exceeds the Executive Director's expenditure authority, the Board shall approve the expenditure in advance or be requested to ratify the Contract either at a special Commission meeting or at the next regularly scheduled Commission meeting.
- a. **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract shall be limited to the Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.
  - b. **Emergency Contract Modification.** Emergency Contracts may be modified by Amendment to address conditions described in the original declaration.
- E. Renewals.** Personal Service Contracts that are being renewed or extended in accordance with their terms are not considered to be newly issued Contracts and are not subject to competitive procurement procedures. The Board may authorize any Contract renewal or extension. The Executive Director may authorize extensions and Contract renewals provided that the aggregate amount of the Contract, including any extension or renewal does not exceed the Executive Director's expenditure authority.
- F. Developer Services Agreement.** The Purchasing Manager may establish a Developer Services Agreement to retain a Contractor to provide development and coordination services for a redevelopment project pursuant to ORS Chapter 457 without a solicitation process.

- G. Technical Assistance Agreements.** The Purchasing Manager may establish a Technical Assistance Agreement with a non-profit firm without a solicitation process.

### **III. SOLICITATION PROCEDURES FOR PERSONAL SERVICES CONTRACTS**

- A. Determining Appropriate Solicitation Procedure.** The Purchasing Manager shall determine and utilize the most appropriate solicitation procedure based on an estimate of the total amount of the Contract, including any anticipated or potential amendments, and the anticipated complexity of the procurement

**B. Procedures for Small Personal Services Contracts not Exceeding \$5,000.**

1. Solicitation is not required, although it is encouraged.
2. If an original Contract does not exceed \$5,000, but it is anticipated that Amendments increasing the value of the Contract will be negotiated, the selection of a Contractor to perform such Work shall be guided by the appropriate process for the anticipated expenditure level.

**C. Procedures for Intermediate Personal Services Contracts between \$5,000 and \$100,000.** Contracts for which the estimated Contract Price does not exceed \$100,000 may be awarded using one of the following two (2) informal Solicitation methods:

1. \$5,000 - \$25,000: Verbal or written solicitation to a minimum of three (3) viable firms. A written record of all firms solicited and Quotes received shall be maintained. If three Quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the Quote.
2. \$25,001 - \$100,000: Solicitation to a minimum of three (3) viable firms based on written requirements or scope of Work. The response to the solicitation shall be in writing. A written record of all firms solicited and Quotes received shall be maintained. If three (3) Quotes are not available, a lesser number will suffice, provided that a written record is made of the effort to obtain the Quotes.

**D. Procedures for Formal Personal Services Contracts Greater than \$100,000.** Contracts for which the estimated Contract Price is more than \$100,000 may be awarded pursuant to the following Solicitation method:

1. **Solicitation.** Solicitation for Proposals shall follow a formal and structured process designed to permit and encourage competition from a maximum number of participants.

2. **Request For Proposals.** A written Request For Proposal (RFP) shall be prepared, and provide the following information as appropriate:
  - a. Relevant information on the project;
  - b. An explanation of the professional Services to be provided by the Contractor, the agencies and groups or individuals involved, and the timing of project phases and deadlines;
  - c. An outline of the project management structure and the support or resources to be provided by the Commission, if any;
  - d. The manner in which a Proposal and any other required information should be submitted;
  - e. A description of the basis, criteria and process for evaluating the RFP responses;
  - f. Information on Contract requirements;
  - g. Policy and program compliance, including Business and Workforce Equity Program requirements, if any;
  - h. The date, time and location of a pre-Proposal conference, if any, and the date and time by which Proposals shall be received in order to be considered;
  - i. The deadline for clarifications and the final Addendum; and
  - j. The address of the office where Proposals should be delivered, and the name of the person to contact regarding the RFP.
  
- E. **Request For Qualifications.** A Request For Qualifications (RFQ) may be used to establish a “short-list” of candidates based on submitted qualifications with an RFP to be used for final selection or may be used to select as-needed Flexible Services Contracts. A written RFQ shall be prepared and shall require information as outlined in the RFP process.
  
- F. **Advertising for Formal Solicitations.**
  1. A notice announcing that the Commission is soliciting Proposals shall be placed at least once in at least one newspaper of general circulation in the Portland area. The last publication date of the advertisement in any publication shall be at least five (5) Days prior to the date Proposals shall be received, and two (2) Days prior to any pre-Proposal conference.

2. The advertisement shall include as a minimum the following:
  - a. The date and time by which Proposals shall be received in order to be considered;
  - b. The general character of the services to be provided or the projected scope of Work;
  - c. The date, time and place of the pre-Proposal conference, if any; and
  - d. The address of the office where the RFP may be obtained, and the name of a person to contact regarding the RFP.
- G. Record of Potential Proposers.** A record shall be maintained and made available to the public for review, as requested, that identifies all persons and entities that, to the Commission's knowledge, receive an RFP.
- H. Addenda to RFP or Other Solicitation Documents.** Changes to the RFP or other solicitation documents shall be made by written Addenda and shall be sent by mail, fax or e-mail to every potential Proposer on file.
- I. Request for Clarifications of RFP Documents.** Prior to the deadline for submitting a protest under item T below, or at such other time as the RFP documents may otherwise specify, a Proposer may request that the Purchasing Manager clarify any provision of the RFP documents. The clarification to a Proposer, whether orally or in writing, does not change the RFP documents and is not binding on the Commission unless the Commission amends the RFP documents by Addenda. Failure to timely request clarification shall be deemed a waiver of the request.
- J. Pre-Proposal Conference.** The Purchasing Manager may hold a pre-Proposal conference to answer questions regarding the project, explain project requirements, or assist prospective Proposers in meeting Business and Workforce Equity Program requirements.
- K. Receipt, Opening, and Availability of Proposals.**
  1. **Receipt.** Upon receipt of Hard Copy Proposals or modifications by the Commission, each Proposal and modification shall be time stamped or marked by hand, not opened, and shall be stored in a secure place until Proposal closing. If Proposals or modifications are opened inadvertently or are opened prior to the time and date set for Proposal closing, the Proposals shall be resealed and stored for opening at the correct time. When this occurs, documentation of this procedure shall be placed in the Proposal file. Upon receipt of electronic proposals or modifications by the Commission, the electronic proposals or Modifications shall be stored in an electronic folder designated by the Purchasing Manager.

2. **Opening.** Proposals will be opened after the deadline for the submission of Proposals and evaluated as set forth in the Selection Procedures below or otherwise set forth in the Solicitation Documents.
3. **Availability.** Prior to issuance of a Notice of Intent to Award or award Notice, the Commission shall record and, upon request, make available the identity of all proposers who responded to a Solicitation. Proposals and Proposal evaluations will be available for public review upon request after the Notice of Intent to Award has been issued except to the extent the Proposer designates trade secrets or other proprietary data to be confidential. Commission legal counsel shall verify and determine that the confidential information claimed to be exempt is in fact exempt from disclosure under the Oregon Public Records Law. Material so designated shall accompany the Proposal shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Proposal. Makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

**L. Negotiation with Proposers.**

1. **General.** There shall be no negotiations with any Proposer prior to Solicitation closing. Prior to award of Contract, the Commission may negotiate with a Proposer to clarify the Proposal or to effect modifications that will make the Proposal acceptable or more advantageous to the Commission or as set forth in this Section.
2. **All Proposals Exceeding Cost Estimates.** If all Proposals as the result of a Solicitation exceed the project cost estimate, the Commission may negotiate with the highest ranked Proposer prior to award of the Contract to bring the cost within the project cost estimate, provided the scope of Work is not substantially changed from the original Solicitation. .
3. **No Proposals Received.** If no Offers are received as the result of a Solicitation, the Commission may negotiate and enter into a Contract with one entity, provided the scope of Work is not substantially changed from the original Solicitation.

**M. Negotiation Disclosure.** Notwithstanding any other provision of law, the records of a Proposer used in Contract negotiation under this section that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502, are not subject to public inspection until after the negotiated Contract has been awarded or the negotiation process has been terminated.

**N. Selection Procedures.**



1. **General.** Selection procedures may vary depending on the nature, complexity, or other circumstances unique to a specific Contract. The chosen selection procedure shall afford all Proposers an equal opportunity to be evaluated and judged according to the same criteria.
2. **Review.** A review of Proposals, whether by the Commission and/or outside parties, shall evaluate the responsiveness of the Proposer to the information requested in the Solicitation or RFP; the proposed Work or product in relation to the needs of the Commission; the qualifications of the Proposer to perform the Work; the resulting cost to the Commission; or other factors as set forth in the Solicitation Documents.
3. **Clarification and Revisions.** The Purchasing Manager may seek clarification of a Proposal or Proposals if it is in the Commission's interest to do so. Revision 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. The Commission may issue an Addendum after opening of the 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.
4. **Rating.** A structured rating formula may be used at the Commission's discretion where specific criteria exist which can be fairly evaluated and compared to established standards. Should such a structured formula be used, the basis for the formula and scoring criteria shall be specified in the Solicitation Documents. Award may be based solely on ranking of Proposals; discussion leading to best offers; best and final offers; serial negotiations; competitive simultaneous negotiations or multiple-tiered competition, or any combination of the above as long as the award basis is established in the Solicitation Documents.
5. **Interview Panel.** An interview panel or advisory committee comprised of Commission staff and/or outside parties as selected by the Commission may be convened to interview finalists selected as a result of a preliminary review and rating.
6. **Recommendation.** Following a review, rating, or interview, a written recommendation that contains the ranking of Proposers and a summary of the process undertaken to determine the ranking shall be documented.
7. **Award Criteria.** The Commission shall award the Contract to the responsible Proposer whose proposal the Commission determines in writing to be the most advantageous based on the evaluation process and evaluation factors as set forth in the Solicitation Document including the outcome of any negotiations authorized by the RFP.

8. **Negotiations.** The Commission may negotiate with Proposers based on the requirements as set forth in the Solicitation Documents. Upon selection of the most responsible Proposer, a process of negotiation with that Contractor may be initiated to finalize the fee, terms, and conditions of the Contract. If an irreconcilable problem arises in the process of negotiation, then the process may be repeated with the next highest recommended Proposer. The process may be repeated as many times as necessary or until the solicitation is canceled.

**O. Rejection of Proposals.**

1. **Individual Proposal.** The Purchasing Manager at his or her sole discretion may reject a Proposal if it does not comply with all prescribed RFP procedures and requirements. Minor informalities or mistakes in Proposals may be corrected by the Proposer at the discretion of the Purchasing Manager without invalidating the Proposal from consideration.

2. **All Proposals.** The Purchasing Manager at his or her sole discretion may reject all Proposals when it is in the public interest to do so.

**P. Withdrawals of Proposals.** Proposals may be withdrawn by written notification signed by the same person authorized to sign the Proposal and received prior to the date and time established for the Proposal closing. A late Proposal withdrawal request received after the Proposal submittal deadline shall not be honored. The Proposal shall be considered with all other submittals.

**Q. Late Proposals and Late Modifications.** A Proposal received after the Proposal submittal deadline is late. Any Request For Proposal or modification received after the Proposal submittal deadline is late. A late Proposal or late Proposal modification shall not be considered and shall be returned to the Proposer unopened unless the Commission in its discretion determines that the late submittal increases competition, does not prejudice any Proposer, and does not compromise the integrity of the competitive bidding system. A late Proposal withdrawal request received after the Bid submittal deadline shall not be honored. The Proposal shall be considered with all other submittals.

**R. Protest of RFP Solicitation Documents.**

1. **Time for Submission of Protest.** Protests of the terms, conditions and other contents of the Solicitation documents shall only be considered when presented to the Purchasing Manager in writing in accordance with the following timelines.

a. Five (5) Days prior to the closing of Proposals or other timeline as set forth in the Contract Solicitation Documents; and

- b. Protests not asserted or not properly asserted within these timelines shall be deemed waived by the protester.
  2. **Basis for Protest.** A protest shall include a detailed statement of the legal and factual grounds for the protest; a description of the resulting prejudice to the protesting Proposer; and a statement of form of relief requested or any proposed changes to the RFP documents.
  3. **Identification of Protest.** It is the Proposer's responsibility to ensure that the protest is received by the Commission within the stated timelines. The protest should be delivered via email or in an envelope, as specified in the Bid Documents, that is clearly marked with the Proposer's name, the RFP number, the project name, date and time of Proposal closing, and identified as a "RFP Document Protest."
  4. **Delay of RFP Closing.** If the Commission receives a protest from a Bidder in accordance with this section, the Purchasing Manager may in his or her discretion extend the date of Proposal closing if the Purchasing Manager determines an extension is necessary to consider the protest and, if necessary, to issue Addenda to the RFP documents.
- S. Notice of Intent to Award.** Unless otherwise provided in the Solicitation documents, the Purchasing Manager shall provide Notice to all Proposers of the Commission's intent to award the Contract. The Purchasing Manager shall have the authority to waive the Notice of Intent of Award for intermediate solicitations based on dollar amount and timeline. The award shall not be final until the later of the following:
1. Seven (7) Days after the date of the Notice, unless otherwise provided in the Solicitation Documents; or
  2. Until the Purchasing Manager provides a written response to all timely filed protests, if any, that denies the protest and affirms the award; or, until any appeal of the Purchasing Manager's decision regarding a protest has been reviewed by the Executive Director.
- T. Cancellation of RFP.**
1. **Cancellation in the Public Interest.** An invitation to provide a Proposal may be cancelled, wholly or in part, when it is determined by the Purchasing Manager to be in the public interest to do so. The reasons for cancellation shall be documented and be made part of the Proposal file.
  2. **Notice of Cancellation.** When an invitation to provide a Proposal is cancelled prior to Proposal closing, a Notice of Cancellation shall be sent to

all known holders of Proposal documents. All Proposals received shall be returned to Proposers.

**U. Protest of Contract Selection.**

1. **Time.** Any Proposer who has submitted a Proposal to the Commission and who is adversely affected by the Commission's Contract award to another Proposer has seven (7) Days after issuance of the Notice of Intent to Award the Contract, unless a different protest period is provided under the RFP documents, to submit a written protest of the award to the Commission. The Commission shall not consider a protest submitted after the time period established in this Rule or such different period as provided in the RFP documents.

2. **Grounds for Protest.** The Proposer's written protest shall specify the grounds upon which the protest is based. A Proposer is adversely affected only if the Proposer is eligible for award of the Contract and is next in line for award, i.e., the protesting Proposer shall claim that all considered Proposers are ineligible for award because their offers were nonresponsive or that the Commission committed a material violation of a provision in the RFP documents or of an applicable statute, and that the protesting Proposer was adversely affected.

Protests not asserted or not properly asserted under the requirements of 1. and 2. above shall be deemed waived by the protester.

3. **Authority to Resolve Protests.** The Purchasing Manager has the authority to settle or resolve a written protest submitted in accordance with the requirements of this Rule.

4. **Decision.** If a protest is not settled, the Purchasing Manager shall issue a written decision on the protest.

5. **Appeal of Decision.** An appeal of the decision by the Purchasing Manager shall be submitted to the Executive Director. The appeal shall be in writing and shall be received by the Commission within seven (7) Days of the issuance of the decision. The appeal shall identify the award in question and specifically outline the reason for the appeal. The decision of the Executive Director regarding an appeal is final. Judicial review of this decision will be available to the extent provided by statute. The Proposer shall exhaust all avenues of administrative review before pursuing judicial review.

**V. Contract Award.**

1. **Prompt Execution of Contract.** Upon Notice of Contract award, the successful Proposer shall furnish insurance information within the timelines set forth in the Solicitation Documents. Failure to execute the Contract or to provide the required information within the required timelines may result in the rejection of the Proposal.
2. **Execution of Contract and Performance of Work.** Upon execution of a Contract, the Commission may, through an Amendment negotiate with the successful Proposer regarding the scope, price, schedule and terms of the Contract so long as negotiations do not result in significant changes to the scope of Work in the original Solicitation Documents.

**W. Contract Termination.** When a Personal Service Contract is terminated by mutual agreement, provision shall be made for the payment of compensation to the Contractor unless otherwise specifically set forth in the Solicitation Documents. In addition to a reasonable amount of compensation for preparatory Work and for all costs and expenses arising out of termination, the amount to be paid to the Contractor:

1. Shall be determined on the basis of the Contract price in the case of any fully completed separate item or portion of the Work for which there is a separate or unit Contract price; and
2. May, with respect to any other Work, be a percent of the Contract price equal to the percentage of the Work completed.

**IV. REINSTATEMENT OF EXPIRED CONTRACTS.**

Contracts may be reinstated once, provided the following requirements are met:

- A. The Contract was not extended or renewed in a timely manner due to unforeseen or unavoidable conditions;
- B. The Contract is reinstated within sixty (60) Days of expiration of the original Contract;
- C. The Purchasing Manager has determined that the Work needs to be completed by the original Contractor after expiration of the Contract and there is no significant change in the Statement of Work and the reinstatement does not raise the aggregate amount of compensation beyond the Executive Director's authority.
- D. The Executive Director shall have the authority to waive the above requirements for reinstatement of a contract under circumstances that are deemed appropriate.

## **Part 4: Public Improvement Contracts**

### **I. SCOPE**

**A. Generally.** In addition to the requirements set forth in Parts 1 and 2 above, the following rules shall apply to Public Improvement Contracts.

**B. Examples.**

1. Public improvements include, but are not limited to, the following:
  - a. Contracts for the construction of structures and infrastructure; the restoration of existing buildings and the restoration, rebuilding, or resurfacing of existing infrastructure; and remodeling or alteration of existing structures or infrastructure;
  - b. Contracts for environmental remediation activities involving the abatement or removal of regulated materials;
  - c. Contracts for the demolition of building structures; and,
  - d. Contracts for the construction or renovation of parks, but not including landscape maintenance.

### **II. SOLICITATION PROCEDURES FOR PUBLIC IMPROVEMENT CONTRACTS**

**A. Policy to Construct Public Improvements at the Least Cost.** For Public Improvement Contracts, it is the policy of the State of Oregon that public agencies shall make every effort to construct public improvements at the least cost to the public agency.

**B. Applicability of Public Contract Solicitation Procedures.** Solicitation procedures for a Public Improvement Contract generally adhere to the procedures described in Part 1 Section III (“Exemptions”) and Part 2 Section II (“Solicitation Procedures for Public Contracts”) of the administrative rules, with the following special provisions:

1. **Emergency Contracts.** The waiver of performance bonds and payment bonds as set forth in the Emergency declaration described in Part 1, Section III, Subsection C, Item 4 does not affect the separate Public Work bond requirement for the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements.
2. **Exemption from Competitive Bidding for Public Improvement Contracts.** The Executive Director within the delegated authority may exempt Public Improvement Contracts not to exceed \$100,000 from the competitive bidding process if it makes written findings that satisfy the requirements set forth in

Part 1, Section III, Subsection C, Item 2. The Board may exempt Public Improvement Contracts with a value greater than \$100,000 from the competitive bidding process if it makes written findings that satisfy the requirements set forth in Part 1, Section III, Subsection C Item 1 and as set forth in ORS279C.330; and, the Commission shall hold a public hearing before final adoption of the findings, according to the following procedures:

- a. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation at least fourteen (14) Days prior to the hearing;
- b. The Notice shall state that the public hearing is for the purpose of taking comments on the Commissions draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. (See ORS 279C.335 for additional procedural, Emergency and notice/publication options, which are not in any way limited by these Rules);
- c. At the public hearing, the Commission shall offer an opportunity for any interested party to appear and present comment;
- d. The Board will consider the findings and may approve the exemption after providing an opportunity for public comment; and
- e. Pursuant to ORS 279C.355 the Commission will prepare a formal post-project evaluation of public improvement projects in excess of \$100,000 for which the competitive process was not used. The purpose of this evaluation is to determine whether it was actually in the Commission's best interest to use an alternative contracting method. The evaluation shall be delivered to the Board within thirty (30) Days of the date the Commission of receipt of all closeout documents and the Commission issues Notice of final acceptance of the project for a single project or the last project in a class of projects. The evaluation shall include but not be limited to the following:
  - i. The actual project cost as compared with the original project estimates;
  - ii. The amount of any guaranteed maximum price;
  - iii. The number of project change orders issued by the Commission;
  - iv. A narrative description of successes and failures during design, engineering and construction;
  - v. An objective assessment of the use of the alternative contracting process as compared to the exemption findings as approved by the Board.

3. **Payment and Performance Bonds.** Unless the Board or Executive Director within his or her delegated authority waive the required payment and performance bonds under ORS 279C.380, or exempts the Contract as an Emergency as set forth in Part 1, Section III, Subsection C, Item 4, or the Board or Executive Director exempts a Contract or classes of Contracts from the required payment and performance bonds, the Contractor shall execute and deliver to the Commission a payment and a performance bond in a sums equal to the Contract Price for all Public Improvement Contracts in excess of \$50,000.
4. **Contents of Bid Documents.** The Bid Documents shall include the following:
  - a. A statement that if the Contract is for a Public Works subject to ORS 279C.800 to 279C.870 and/or the Davis Bacon Act (40 U.S.C 276a), no Bid will be received or considered by the Commission unless the Bid contains a statement by the Bidder as a part of its Bid that the applicable statutes and regulations are to be complied with;
  - b. Information addressing whether a Contractor or subcontractor shall be licensed ORS 468A.720 to Work with asbestos-containing materials;
  - c. A statement that no Bid for a construction Contract shall be received or considered by the Commission unless the Bidder is registered with the Construction Contractor's Board, or licensed by the State Landscape Contractor's Board; and
  - d. The date, time and place that the Commission will publicly open the Bids and the date, time and place for submission of the first-tier subcontractor information as outlined in ORS 279C.370.
5. **Advertisement for Bids.**
  - a. If the Contract is for a public improvement with an estimated cost in excess of \$100,000, the advertisement for bids shall be published in at least one trade newspaper of general statewide circulation; and
  - b. The Solicitation for a public improvement shall state whether the Contract is for a Public Works subject to ORS 279C.800 to 279C.870 and/or the Davis Bacon Act (40 U.S.C 276a).
6. **Bid Security.** Unless exempted from this requirement by the Board or Executive Director according to ORS 279C.390, Bid security not to exceed ten percent (10%) of the base Bid(s) shall be required for Public Improvement Contracts over the informal limit. Bid surety may be in the form of a surety bond, cashier's check, certified check or irrevocable letter of credit.



7. **Prequalification.** The Commission shall set forth the prequalification process, criteria and timeline to include the general description of the type and nature of the Contract.
8. **Protest of Bid Documents.** Protests of the terms, conditions, and other contents of the Bid Documents shall only be considered when presented to the Purchasing Manager in writing at least seven (7) Days prior to Bid closing; however, if the time between first advertisement and Bid closing is less than ten (10) Days, protests shall be made within three (3) Days prior to Bid closing.
9. **Closing.** The deadline for the submission of Bids shall occur on a Tuesday, Wednesday, or Thursday and at a time between 2:00 p.m. and 5:00 p.m.
10. **Bid Evaluation Criteria.** Invitations to Bid may solicit lump sum Offers, unit price Offers or alternative Bid item Offers or any combination as set forth in the Solicitation Document.
  - a. The Commission shall evaluate lump sum Bids as adjusted with or without alternative Bid items as set forth in the Solicitation Document or in the best interest of the Commission for the purposes of comparing Bids and determining low Bid price.
  - b. The Commission shall evaluate unit price Bids based on the unit measurement and extended pricing as adjusted with or without alternative Bid items as set forth in the Solicitation Document or in the best interest of the Commission for the purposes of comparing Bids and determining low Bid price. In the event of a mathematical discrepancy between unit price and extended price calculation as submitted by the Bidder, the unit price shall govern.
11. **Special Requirements to Determine Responsiveness.** For Public Improvement Contracts, such requirements will recognize that it is the policy of the State of Oregon that public agencies shall make every effort to construct public improvements at the least cost to the public agency. Within two (2) Working hours after the date and time of the deadline when the Bids are due, a Bidder shall submit to the Commission a disclosure of the first-tier subcontractors.
12. **Requirement to Determine and Report Contractor Responsibility.** For Public Improvement Contracts, the requirements of ORS 279C.375 shall be followed to determine and document the lowest responsible Bidder. Within thirty (30) Days after the contract award date, the responsibility determination for the lowest responsible Bidder shall be forwarded to the Construction Contractors Board.

13. **Determination of Lowest Responsible Bidder.** The lowest Responsible Bidder is the lowest Bidder who is not on the list established by the Construction Contractors Board pursuant to ORS 701.227 and, as applicable, is not listed as a Contractor ineligible to receive Public Works Contracts by the federal Department of Labor or the state Bureau of Labor and Industries, and otherwise satisfies the requirements of ORS 279C.375.
14. **Contract Requirements.** In addition to any Commission required conditions, all Public Improvement Contracts shall contain the requirements as set forth in ORS 279C.500 through ORS 279C.545.
15. **Prompt Payment of Public Improvement Contractor.**
  - a. **Policy.** It is the policy of the Commission that all payments due on a Public Improvement Contract and owed by the Commission shall be paid promptly in accordance with ORS 279.C570.
  - b. **Amount and Timing of Progress Payments.** Notwithstanding any payment withheld as retainage, the Commission shall make progress payments on a Public Improvement Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed that are approved by the Commission.
  - c. **No Waiver.** A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein, whether latent or patent.
  - d. **Interest Due.** Interest shall be due to the Contractor on a progress payment the earlier of:
    - i. Thirty (30) Days after receipt of the invoice from the Contractor; or
    - ii. Fifteen (15) Days after the payment is approved by the Commission.
  - e. **Calculation of Interest.** The rate of interest charged to the Commission on the principal amount due shall be three (3) times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) Days after receipt of the invoice from the Contractor or fifteen (15) Days after the payment is approved by the Commission, whichever is earlier, but the rate of interest shall not exceed thirty (30%) percent.
  - f. **Payment of Interest.** The Commission shall automatically pay interest on a progress payment when interest is due. The interest payment shall be added to the principal balance and the Contractor shall not be required to petition, invoice, bill or wait for the interest due.

- g. **Incorrect or Disputed Invoices.** If an invoice is filled out incorrectly, if required documentation is not submitted, or when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the Commission shall so notify the Contractor within fifteen (15) Days of receipt of the invoice stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the Contractor within seven (7) Days of being notified by the Commission, shall not cause a payment to be made later than specified in Subsection d above unless interest is also paid. The Commission shall not be liable for progress payments or interest unless and until the invoice is corrected, the defective or incomplete Work is corrected, or the good faith dispute is resolved.
  
- h. **Retainage.** As Work progresses, the Purchasing Manager may reduce the amount of the retainage and the Purchasing Manager may eliminate retainage on any remaining monthly Contract payments after fifty (50%) percent of the Work under the Contract is completed if, in the Purchasing Manager's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, and the application shall include written approval of the Contractor's surety. However, when the Contract Work is ninety-seven point five (97.5%) percent completed the Purchasing Manager may, at his or her discretion and without application by the Contractor, reduce the retained amount to one hundred (100%) percent of the value of the Contract Work remaining to be done. The Purchasing Manager may withhold not more than five (5%) percent of a progress payment as retainage.

#### 16. **Prevailing Wage Requirements.**

- a. Contracts and Contract specifications for public improvements that meet the definition of a Public Works project and costs exceed the amount exempted in ORS 279C.810 including all Amendments, Change Orders and Field Directives, shall contain provisions requiring Contractor or subcontractor or other person doing or contracting to do the whole or any part of the Work contemplated, shall comply with state prevailing wage requirements, including the payment of the applicable prevailing wage rates and overtime to Workers in each trade or occupation subject to these requirements, and a prevailing wage rate fee. The Solicitation Documents, Bid specifications, or Contract shall incorporate the applicable prevailing wage rates, a provision that a fee is required to be paid to the Bureau of Labor and Industries, a provision that Workers shall be paid not less than the specified minimum hourly rate of wages, a provision that the Contractor and every subcontractor shall have a Public Works Bond filed with the Contractors Board prior to starting Work unless exempt and that the Contractor will have a provision in all subcontracts requiring the

subcontractor to have a Public Works Bond filed with the Contractors Board before starting Work.

- b. Public improvements regulated under the federal Davis-Bacon Act shall comply with the labor standards provisions set forth by federal prevailing wage regulations.
- c. Public improvements regulated under the federal Davis-Bacon Act and that also meet the definition of Public Works shall comply with the requirements of both the Davis-Bacon Act and ORS 279C.800-279C.870. In addition to the above requirements, contract and contract specifications shall include information showing which prevailing rate of wage is higher as determined by the Commissioner of the Bureau of Labor and Industries.
- d. The PDC Construction Wage Policy was adopted by the PDC Board on January 10, 2007 through Resolution 6424 and subsequently amended on April 11, 2007 through Resolution 6471, on October 10, 2007 through Resolution 6513 and on January 29, 2009 through Resolution 6666. Rates under this Policy are identical to the BOLI published construction rates and include wage, fringe, and overtime rates and apprentice pay.

PDC Construction Wage requirements apply to contracts for environmental remediation and/or demolition work that equal or exceed \$50,000 and that are not subject to BOLI or Davis-Bacon wage rates (previously identified above).

## Part 5: Alternative Contracting Methods

### I. GENERAL

- A. **Generally.** In addition to the requirements set forth in Parts 1, 2 and 4 above, the following rules shall apply to Alternative Contracting Methods.
- B. **Definition.** Alternative Contracting Methods means innovative Procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of construction services obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder. In industry practice, alternative contracting methods include, but are not limited to, variations of Design/Build, Guaranteed Maximum Price (GMP), Cost Plus Fee, and Construction Manager/General Contractor (CM/GC) forms of contracting, as well as other developing techniques such as performance contracting and cost plus time contracting which are addressed under these Rules.
- C. **Exemption from Competitive Bidding.** Alternative contracting methods are exceptions to customary public contracting processes and therefore each project utilizing alternative contracting methods shall first be exempted from formal solicitation as provided in Part 1, with hearings as provided in Part 4, Section II, Subsection B, Item 2. If the Commission is required to act promptly due to circumstances beyond the Commission's control that do not constitute an emergency, Notification of the public hearing may be published simultaneously with the Commission's solicitation of Contractors for the alternative public contracting method, as long as responses to the Solicitation are due at least five (5) Days after the meeting and approval of the findings.

### II. COMPETITIVE NEGOTIATION

- A. **Generally.** The Commission may utilize competitive negotiation, in which Proposal evaluation and award follow established rules for an RFP process, allowing flexibility in both Proposal evaluation and Contract negotiation, but only in accordance with state law and these Rules.
- B. **Evaluation Factors.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP to include but not limited to 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 affect cost and quality. Proposal evaluation shall be as objective as possible, recognizing, however, that some subjectivity is unavoidable in such procurements. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

1. Be reasonable estimates based on information available to the Commission;
  2. Treat all Proposals equitably; and
  3. Recognize that public policy requires that public improvements be constructed at the least overall cost to the Commission.
- C. Construction Manager/General Contractor Evaluation Factors.** In addition to factors as set forth subsection B above 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, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.
- D. Design/Build Evaluation Factors.** In addition to factors as set forth in Subsections B and C above include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design/builder team experience and related matters which affect cost or quality.
- E. Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and these Rules, provided that the general scope of Work 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 Documents.
- F. Evaluation of Project Not Contracted by Competitive Bidding.** As required under ORS 279C.355 and as further set forth in Part 4, Section II, Subsection B, Item 1 (e) the Commission shall prepare and deliver to the Board a formal post-project evaluation of public improvement projects in excess of \$100,000 for which a competitive bidding process was not used.

## **Part 6: Conditionally Responsible Bidder List**

**I. GENERAL.** The Commission may in its discretion, through the Purchasing Manager, maintain a list of Bidders, Proposers, or Offerors whose work for the Commission, based on substantial evidence, including written documentation, exhibited one or more of the following deficiencies: any lack of performance, unsatisfactory performance, or deficient or unsatisfactory work; failure to meet schedule; failure to promptly pay subcontractors or suppliers; excessive Change Order work; nonresponsiveness; or any type of non-compliance with Contract terms and conditions.

**II. NOTICE TO CONTRACTOR OR SUBCONTRACTOR OF CONTRACTOR.** The Purchasing Manager shall send written Notice to the Contractor or a subcontractor of a Contractor, via certified mail, return receipt requested and first class mail, on the next business Day after the name of a Contractor or a subcontractor of a Contractor has been placed on the Conditionally Responsible Bidder List.

**III. RECORDS SUPPORTING INCLUSION ON CONDITIONALLY RESPONSIBLE BIDDER LIST.** The Purchasing Manager shall keep all records of performance of all Contractors and subcontractors of Contractors that formed the basis for the inclusion of any Contractor or subcontractor of a Contractor on the Conditionally Responsible Bidder List. All such records concerning an individual Contractor or subcontractor shall be available to such individual Contractor or subcontractor, upon written request by that Contractor or subcontractor.

**IV. APPEAL.** Any prospective Contractor or any subcontractor of a Contractor who wishes to appeal the Purchasing Manager's decision may, within seven (7) Days after receipt of the written Notice of placement on the Conditionally Responsible Bidder List, notify the Purchasing Manager in writing of an appeal. The written Notice of appeal shall specify the grounds upon which the appeal is taken. The Purchasing Manager shall issue a written decision regarding the appeal. An appeal of the written decision by the Purchasing Manager may be submitted to the Executive Director. The appeal shall be in writing and shall be received by the Executive Director within seven (7) Days of the issuance of the written decision by the Purchasing Manager. The appeal shall specifically outline the reason for the appeal. The written decision of the Executive Director is final. Judicial review of this decision will be available to the extent provided by statute. The Contractor or subcontractor of a Contractor shall exhaust all avenues of administrative review before pursuing judicial review. A prospective Contractor or any subcontractor of Contractor shall not remain on the Conditionally Responsible Bidder List for more than three (3) consecutive years.

## **Part 7: Bidder Disqualification or Debarment**

- I. GENERAL.** The Commission may in its discretion Disqualify in compliance with ORS 279C.440, ORS 279C.445 and ORS279C.450 or Debar in compliance with ORS 279B.130 and ORS 279B.425 a prospective Bidder or Proposer from consideration for award of any Commission Contracts for the reasons listed below after providing the prospective Contractor with Notice and a reasonable opportunity to be heard. The Commission may, in lieu of Disqualification for Award of Public Improvement Contracts, petition the Construction Contractors Board to disqualify a person for award of the Commission's Public Improvement Contracts. The Disqualification or Debarment by the Commission shall not be for a period of more than three (3) years.
- II. REASONS FOR DISQUALIFICATION OR DEBARMENT.** A prospective Contractor may be Disqualified or Debarred from eligibility for consideration for award of the Commission's Contracts for any of the following reasons:
- A. Conviction of a Criminal Offense.** The prospective Contractor 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 such Contract or subcontract;
  - B. Conviction Under Laws Involving Honesty.** The prospective Contractor 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 Contractor's responsibility as a Contractor;
  - C. Conviction Under Anti-Trust Laws.** The prospective Contractor has been convicted under state or federal anti-trust statutes;
  - D. Violation of Contract Provision.** The prospective Contractor has committed a violation of a Contract provision that is regarded by the Commission 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. The Purchasing Manager may use the Conditionally Responsible Bidder list as a basis to document unsatisfactory performance under a Contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the prospective Contractor may not be considered to be a basis for Disqualification or Debarment;
  - E. Workers Compensation and Unemployment Insurance.** The prospective Contractor does not carry workers' compensation or unemployment insurance as required by statute.



- III. NON-WAIVER.** The failure to Disqualify or Debar a prospective Contractor for any of the above reasons shall not in any way impair or waive the Purchasing Manager's right to reject an Offer or Offeror as not responsive or not responsible.
- IV. DISQUALIFICATION OR DEBARMENT DECISION.** The Commission shall issue a written decision to Disqualify or Debar a prospective Contractor and shall provide the decision to the prospective Contractor immediately. The decision shall state the reasons for the action taken and inform the prospective Contractor of the right to appeal the decision under these Rules.
- V. APPEAL OF DISQUALIFICATION OR DEBARMENT DECISION.** Any prospective Contractor who wishes to appeal the Disqualification or Debarment decision shall, within three (3) business Days after receipt of the Disqualification or Debarment Notice, notify the Purchasing Manager of an appeal. Immediately upon receipt of such Notice of appeal, the Executive Director and Board shall be notified. The procedure for appeal from Disqualification shall be in accordance with ORS 279C.450 and Debarment shall be in accordance with ORS 279B.425.