

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION ADOPTING PUBLIC CONTRACTING RULES**

**WHEREAS**, the Molalla Aquatic District (“District”) is an Oregon special district which is subject to Oregon’s public contracting laws, Oregon Revised Statutes (“ORS”) Chapter 279A, 279B, and 279C; and

**WHEREAS**, ORS 279A.065(5) provides that a local contracting agency may adopt its own rules of procedure for public contracting that:

- A. Specifically state that the Model Rules adopted by the Oregon Attorney General (“Model Rules”) do not apply to the contracting agency; and
- B. Prescribe rules of procedure that the contracting agency will use for public contracts, which may include portions of the Model Rules; and

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

1. Except as otherwise provided herein. The District hereby adopts the Model Rules as contracting rules for the District, as such Model Rules now exist or are later modified.
2. That the District adopts the public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A, shall be in addition to, and shall supersede any conflicting provisions in the Model Rules.
3. The District shall regularly review changes in the public contracting laws and the Model Rules to ensure that the Exhibit A Rules are consistent with current law.

**APPROVED AND ADOPTED** on July \_\_, 2017.

\_\_\_\_\_  
Board President

ATTEST:

\_\_\_\_\_  
District Secretary

## **EXHIBIT A**

### **PUBLIC CONTRACTING RULES AND PROCEDURES**

#### **A. Personal Services.**

- 1) **Definition.** “Personal Services” shall be defined to include those services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgement, and for the quality of the service depends on attributes that are unique to the service provider. Such services shall include but are not limited to: Architect; engineer, attorney; bookkeeper; accountant, auditor; computer programmer; artist; designer; consultant; trainer or educator; workshop facilitator.
  
- 2) **Contracts for Personal Services Other than Architectural, Engineering and Surveying Services, and Related Services.**
  - a) A personal services contract totaling, or estimated to total, less than \$50,000 in the aggregate in either a calendar year or a fiscal year may be awarded by direct appointment, without competitive bidding.
  
  - b) A personal services contract totaling, or estimated to total, between \$50,000 and \$150,000 in the aggregate in either a calendar year may be awarded after obtaining at least three informal quotes, according to the procedures for Intermediate Procurement described in ORS 279B.070.
  
  - c) A personal services contract totaling, or expected to total, more than \$150,000 in the aggregate in either a calendar year or a fiscal year shall be awarded using competitive sealed proposals as provided in ORS 279B.060, unless exempted from competitive bidding by resolution of Local Contract Review Board, according to the requirements of ORS 279B.085.
  
  - d) Personal service contracts exempted from competitive proposal process may be awarded in manner authorized by the Local Contract Review Board.
  
- 3) **Contracts with Architects, Engineers, and Land Surveyors.**
  - a) A contractor Architectural, Engineering, or Surveyng services may be netered into by direct appointment if such contract is estimated not to exceed \$50,000 in a calendar or a fiscal year, or if the project described in the contract consists of work that has been substantially described, planned, or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.

- b) Unless otherwise provided in this Section, contracts for Architectural, Engineering, or Surveying services shall be awarded according to the procedures for competitive proposals described in ORS 279B.060 and these Rules.

**B. Delegation.**

- 1) Except as otherwise provided in these Rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code shall be exercised and performed by the Board of Directors.
- 2) The Aquatic Director may approve contracts without board approval, provided such contracts do not exceed \$10,000, and provided funds for the contract are duly provided for in the District's budget. The Aquatic Director also may authorize any contract in an emergency pursuant to Section G of these Rules.
- 3) All other contracts must be approved by the Board of Directors.

**C. Special Procurements and Exemptions.**

- 1) The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.
- 2) The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the process described in OAR 137-049-0640 through 137-049-1690.

**D. Small Procurements (under \$5,000).**

- 1) Public contracts under \$5,000 are not subject to competitive bidding requirements. The Board of Directors or designee shall make reasonable efforts to obtain competitive quotes in order to ensure the best value for the District.
- 2) The District may amend a public contract awarded as a small procurement beyond the \$5,000 limit in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price by a sum that is greater than twenty-five percent (25%) of the original contract price.

**E. Intermediate Procurements.**

- 1) A contract for procurement of goods, or for services which are not Personal Services, estimated to cost between \$5,000 and \$150,000 in a calendar year or a fiscal year, or a contract for a public improvement that is estimated to cost between \$5,000 and \$100,000 in a calendar or fiscal year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.
- 2) If the contract is expected to be \$75,000 or more, bid specifications and all bids must be given in writing.

**F. Methods for Awarding Contracts Using the Request for Proposal Process.** In making an award using the request for proposal process in ORS 279B.060, the District may use any evaluation method determined to be most appropriate for the selection process, including, but not limited to, the process described in ORS 279B.060(6)(b), as well as direct appointment of personal services if direct appointment is determined to be most advantageous to the District. The evaluation process(es) to be used shall be stated in the Request for Proposals. OAR 137-047-0261 through 137-047-0263 shall apply to the evaluation of proposals.

**G. Emergency Contracts.**

- 1) “Emergency” shall be defined as follows: “Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition”
- 2) The Board President or Aquatic Director shall have the authority to determine when emergency conditions exist sufficient to warrant an emergency contract, and shall so declare in a written memorandum that documents the nature of the emergency and the procedures used to award the contract. If the writing is unfeasible prior to entering into the emergency contract, it shall be prepared as soon as possible following the contract award. The writing shall be made part of the District’s files.

**H. Disposal of Surplus Property.**

- 1) “Surplus Property” is defined as any personal property of the District that has been determined to be of no use or value to the District.
- 2) If the estimated replacement value of the property is \$200 or less, the Aquatic Director may, at his or her discretion, dispose of the surplus property in any manner deemed appropriate without Board approval.
- 3) If the estimated replacement value exceeds \$200, the Board shall be required to declare the property to be surplus property. The Board, or a designee named by the Board, then may dispose of surplus property in the manner that is, in the discretion of the Board or designee, deemed most advantageous to the District or to the community at large.

**I. Appeals of Prequalification and Debarment Decisions.**

- 1) The Local Contract and Review Board shall hear all appeals of prequalification and debarment decisions made by the District.
- 2) Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additional procedures shall apply:
  - a. Notices shall be submitted in writing to the Aquatic Director. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
  - b. Upon opening of the hearing, the Board President shall explain the District's decision being appealed and the justification therefor. The appellant shall then be heard. Time for the appellant's testimony shall be established by the Board President. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board President.
  - c. Once all testimony and evidence in support of the appeal are heard, any party requesting time to testify in support of the District's decision shall be provided time to be heard, within time limits established by the Board President. Any party testifying in opposition to the appeal may submit testimony or evidence relevant to the decision or appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board President shall close the hearing.

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

**K. Electronic Advertising.** Pursuant to ORS 279C.360 and ORS 279B.055, electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost effective to do so. The Board shall determine when electronic publication is appropriate, and consistent with the District's public contracting policies. However, regardless of electronic or other advertisement, if a public improvement contract has an estimated cost in excess of \$125,000, the advertisement must be published in at least one trade newspaper of general statewide circulation.

