

Tumalo Basin Sewer District Public Contracting Rules and Procedures Policy

The Tumalo Basin Sewer District Contract Review Board has adopted as its public contracting rules ORS 279, A, B and C and the Attorney General's Model Public Contracting Rules, OAR Chapter 137, Division 46 (General Provisions Related to Public Contracting), Division 47 (Public Procurements For Goods or Services), Division 48 (Consultant Selection: Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services), Division 49 (General Provisions Related to Public Contracts for Construction Services), subject to the exceptions provided in this document.

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Definitions

"Award" means the selection of a person to provide goods, services or public improvements for a specified price or prices.

"Bid" means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

"Bidder" means a person that submits a bid in response to an invitation to bid.

"Contracting agency," means a public body authorized by law to conduct procurement.

"Contract Review Board" means the Board of Directors for Tumalo Basin Sewer District
"Days" means calendar days.

"District" means the Tumalo Basin Sewer District is a political subdivision of the State of Oregon.

"Exemptions" mean exemptions from the formal competitive selection procedures for **public improvement** contracts and **personal service** contracts for architects, engineers, land surveyors, and related services, as well as contracts and classes of contracts designated as "special procurements" under ORS 279B.085.

"Goods" includes supplies, equipment, materials, personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified in this paragraph.

"Goods and services" or "goods or services" includes combinations of any of the items identified in the definitions of "goods" and "services."

"Person" means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a for profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.

"Personal Services" means services described as follows:

- A. Personal services shall mean services that call for specialized skills, knowledge and resources in the application of highly technical or scientific expertise or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal

services contractor, with price being secondary. In addition to the general description of personal service contracts, the following classes of contracts are personal service contracts: Contracts for services performed as an independent contractor in a professional capacity, including but not limited to: the services of an accountant, attorney, architect, architectural or land use planning consultant, construction manager, information technology consultant, registered professional engineer, financial/investment/insurance advisor, underwriter, appraiser or surveyor, data processing consultant.

- B. Personal Services Contracts Do Not Include: Contracts primarily for equipment, supplies or materials. For example, a contract to supply all hardware and standard software is not a Personal Services Contract, but a contract with a technology consultant to design or develop a new computer system is a Personal Services Contract.

"Public Improvement" means projects for construction, reconstruction, or major renovation on real property by or for the District. "Public Improvements include emergency work, minor alteration, ordinary repair, maintenance necessary in order to preserve a public improvement.

"Public Contract" means any purchase, lease, or sale by the District of personal property, public improvements, or services other than agreements, which are for personal and professional services.

"Proposal" means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or an informal solicitation.

"Quote" means a price offer made in response to an informal solicitation to provide goods, services or public improvements.

"Request for Proposal" (RFP) means the solicitation of written competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specifications and price will not necessarily be predominant award criteria.

"Services" means all types of services other than personal services. It encompasses a wide range of activities performed by a contractor, including but not limited to labor, time, and effort. Examples include, but are not limited to: maintenance, repair, janitorial services, and other non-specialized tasks. The definition excludes personal services, which are typically those provided by individuals with specialized skills or expertise, such as consultants, architects, engineers, and other professionals.

1) Personal Services Contracts

A) **Criteria for Evaluating, Screening, and Selecting Personal Services Consultants.** The sanitary district may evaluate, screen, and select individuals or firms providing personal services based on the following criteria:

- **Qualifications and Experience:** Relevant experience and professional qualifications.
- **Past Performance:** Previous work quality and client satisfaction.
- **Availability:** Ability to meet the district's timeline and requirements.
- **Cost:** Reasonableness of the proposed fees and overall cost-effectiveness.
- **Location:** Geographic proximity to the project or the area where the services are to be performed.
- **References:** Positive references from previous clients.

B) **Procedures for Awarding Contracts**

- **Direct Award:** For non-construction-related personal services, the district may award contracts directly to a selected contractor who meets the criteria without competition.
- **Competitive Process:** For construction-related personal services (architects, engineers, surveyors, photogrammetrists, and related services), the district will follow a qualifications-based competitive process if the contract amount exceeds \$100,000, in accordance with ORS 279C.110

C) **Construction-Related Professional Services Qualification-Based Selection (QBS):** For contracts exceeding \$100,000, District will:

1. Evaluate qualifications first.
 2. Select the most qualified candidate(s).
 3. Negotiate the price after selection.
- **Request for Proposals (RFP):** The RFP must include:
 1. Detailed project description.
 2. Specific criteria for evaluation.
 3. Submission requirements.
 4. Timeline for selection and project completion.

D) **Direct Appointment Procedure**

1. **Conditions for Direct Appointment:** The District may enter into a contract directly with a consultant without following the selection procedures set forth elsewhere in these rules if:
 - a. **Emergency:** The District finds that an emergency exists.
 - b. **Small Estimated Fee:** The estimated fee to be paid under the contract does not exceed \$100,000.
 - c. **Continuation of Project with Intermediate Estimated Fee:** For projects being continued, where the estimated fee will not exceed \$250,000, the services must:

- i. Consist of or be related to services that have been substantially described, planned, or previously studied in an earlier contract with the same consultant.
 - ii. A formal selection procedure was used to select the consultant for the earlier contract.
 - d. **Continuation of Project with Extensive Estimated Fee:** For projects being continued, where the estimated fee is expected to exceed \$250,000, the services must:
 - i. Consist of or be related to services that have been substantially described, planned, or previously studied in an earlier contract with the same consultant.
 - ii. A formal selection procedure was used to select the consultant for the earlier contract.
 - iii. The District makes written findings that entering into a contract with the consultant will promote efficient use of public funds, result in substantial cost savings, and protect the integrity of the public contracting process.
- 2. **Sources for Consultant Selection:** The District may select a consultant from the following sources, considering qualification criteria outlined in Section 1B:
 - a. The District's list of consultants created under OAR 137-048-0120.
 - b. Another contracting agency's list of consultants, with written consent of that agency.
 - c. All consultants offering the required services that the District can reasonably identify under the circumstances.
- 3. **Contract Negotiations:** The District shall direct contract negotiations with the selected consultant towards discussing, refining, and finalizing:
 - a. The specific scope of services to be provided.
 - b. The consultant's performance obligations and schedule.
 - c. Payment methodology, rates, number of hours, and a maximum amount payable that is fair and reasonable, considering the value, scope, complexity, and nature of the services.
 - d. Any other conditions or provisions in the District's best interest.
- F) **Exempt Personal Services Contracts.** Personal Services contracts existing on the effective date of these Rules are exempt and hereby extended by direct appointment. Contracts for accounting, legal, underwriting, and investments, financial and insurance advising services are exempt.

2) Delegation.

- A) Except as otherwise provided in these rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the Board of Directors.

- B) Unless expressly limited by the Local Contract Review Board or these rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the Board Chairman or the Chairmen's designee, including the authority to enter into emergency contracts pursuant to ORS 279B.080.
- C) All public contracts estimated to cost \$150,000 or more in a calendar year must be approved by the Board of Directors.
- D) All public contracts estimated to cost less than \$150,000 in a calendar year may be entered into by the Board Chairman or designee without Board approval. However, either the Board or the Board Chairman may enter into emergency contracts or designee pursuant to Paragraph 7 of these Rules, regardless of dollar limits, subject to ORS 294.481.

3) **Special Procurements and Exemptions.**

- A) 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.
- B) The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

4) **Small Procurements (Under \$10,000).**

- A) Public contracts under \$10,000 are not subject to competitive bidding requirements. The Board Chairman or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District.
- B) The District may amend a public contract awarded as a small procurement beyond the \$10,000 limit in accordance with OAR 137-047-0800

5) **Intermediate Procurements.**

- A) A contract for procurement of goods and services estimated to cost between \$10,000 and \$150,000 in a calendar year, or a public improvement that is

estimated to cost between \$10,000 and \$150,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.

- B) The District may amend a public contract awarded as an intermediate procurement beyond the stated limitations in accordance with OAR 137-047- 0800, provided the cumulative amendments shall not increase the total contract price to a sum that is greater than 25% of the original contract price.

6) **Electronic Advertising.**

- A) Pursuant to ORS 279C.360 and ORS 279B.055C(4c), electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost- effective to do so. The Board Chairman or designee shall have the authority to determine when electronic publication is appropriate, and consistent with the District's public contracting policies (OAR 137-47-0270(3)).

7) **Emergency Contracts.**

- A) 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."
- B) The Board Chair, or designee shall have authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor shall be documented.
- C) Emergency contract may be awarded as follows:
 - I) Good and Services. Emergency contracts for procurement of goods and services may be awarded pursuant to ORS 279B.080 and Paragraph 2, "Delegation" of these Rules.
 - II) Public improvements. The District hereby adopts OAR 137-049- 0150 as its contacting rules for awarding a public improvement contract under emergency conditions.

8) **Disposal of Surplus Property.**

- A) "Surplus Property" is defined as any personal property of the District that has been determined by the Board Chairman as being of no value to the District.
- B) The Board Chairman may dispose of surplus property as follows:

- 1) For surplus property deemed to have an estimated salvage value of \$50,000 or less, the Board Chairman may authorize the property to be sold, donated or to be destroyed.
- 2) For surplus property deemed to have an estimated salvage value of more than \$50,000, the Board of Directors may authorize the Board Chairman to dispose of the property in any appropriate manner.

- a. Surplus property may be disposed of in the manner that is most advantageous to the District or the community at large, including, but not limited to, the following:

- I. Public Auction. Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the property. Employees of the District may purchase surplus property from the District only at an advertised auction, and only if the employee submits the highest bid for such property.
- II. Donations. Surplus property may be donated or sold to any non-profit organization, any other local government, or any state or federal program created to dispose of surplus property.
- III. Disposal. Surplus property determined to be of insufficient value to merit auction or donation may be disposed of in any appropriate manner.

9) **Appeals of Prequalification Decisions and Debarment Decisions.**

- A) Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additions procedures shall apply to hearing on such decisions by the LCRB:
 - I) Notice shall be submitted in writing to the Board Chairman. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
 - II) Upon opening the hearing, District staff shall explain the District's decision being appealed and the justification thereof. The Appellant shall then be heard. Time for the appellant's testimony shall be established by the Board Chair. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board Chair.
 - III) Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District's decision shall be provided

time to be heard, with time limits established by the Board Chair. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board Chair shall close the hearing.

IV) When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

10) **Purchases from Federal Catalogs.**

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

<u>Type of Procurement</u>	<u>Oregon Statutes</u>
<p>Direct Selection (Small Procurements):</p> <p>Procurements of Products, services or supplies</p> <p>Are exempt from competitive bidding when their value is less than a specified amount.</p>	<p>Exempt when less than \$10,000</p> <p>ORS 279B.065</p> <p>OAR 137.047.0265</p>
<p><u>Informal Competitive Quotes</u></p> <p>(Intermediate Procurement):</p>	<p>Required for procurements between \$10,000 and \$150,000</p> <p>ORS 279B.070</p> <p>OAR 137.047.0270</p>
<p><u>Formal Competitive Sealed Bids:</u></p> <p>Procurement of products, services or supplies requires formal written competitive proposals when their value exceeds a specified amount.</p>	<p>Required when value exceeds \$150,000.</p> <p>Local Contract</p> <p>Board sets amount based on upper limits established for Informal Quotes</p> <p>ORS 279B.055 & .060</p> <p>OAR 137.047.0260-0263</p>
<p><u>Sole Source:</u></p> <p>Allows agencies to award a contract for goods or services without competition.</p>	<p>If value is \$50,000 or less, approval may be given by Board Chair.</p> <p>Written findings and public notice required for sole source purchases greater than \$50,000.</p> <p>Requires Board to determine its own rules.</p> <p>ORS 279B.075</p> <p>OAR 137.047.0275</p>

Type of Procurement**Oregon Statutes**

Emergency Procurement:

May enter into public contracts without competitive bid under emergency situations.

Allows head of agency or designee to authorize a defined emergency procurement in writing.

ORS 279B.080

OAR 137.047.0280

Disposal of surplus and abandoned property

Requires Board to determine its own procedure.

ORS 279A.280

Personal Services

Contracts

Requires agencies to define "personal services" and establish procedures for contracting.

ORS 279A.070

Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying and Related Services

Must adopt procedures for screening and selection. Requires selection be determined based on qualifications for the type of professional service.

279C.105

Notice of Intent to Award a Contract

Requires notice to be given seven (7) days before the award of a public improvement contract to each bidder or proposer.

ORS 279C.375, OAR 137.049.0395

Type of Procurement

Oregon Statutes

Pre-Qualification
Process

Agency may require Pre-
Qualification for contracts to
provide particular types of goods
and services.

ORS 279B.120

OAR 137.047.0550 ORS 279C.430

OAR 137.049.0220